

AIRROC[®] MATTERS

Special Issue: AIRROC[®]/Cavell Commutation Event

Rendez-vous 2009



A NEWSLETTER ABOUT RUN-OFF COMPANIES AND THEIR ISSUES

Rendez-vous October 19-21, 2009 www.airroc.org

Message from CEO and Executive Director

AIRROC's 5th Birthday



By Trish Getty

On December 14, 2004 AIRROC was incorporated in New York so we celebrate AIRROC's fifth birthday! In early 2004, AIRROC was the brainchild of Debra Hall and Frank Nutter of the Reinsurance Association of America who saw a need for a forum to discuss and resolve issues relating to the management and disposal of insurance run-off business. A group of interested parties, including future CEO Trish Getty, met in August of 2004 to discuss and forward the concept.

By the end of 2004, twenty-seven founding member companies (Allstate Ins. Co. was the first member) committed the necessary seed money for 2005. We began with eleven Board of Directors members including founding chairman Andrew Maneval of First State Insurance Co. and Vice-Chair Terry Kelaher of Allstate Insurance Co. By the end of 2005, the AIRROC membership grew to forty-one; today it is sixty-three. AIRROC also joined forces with Cavell to hold the first commutation and networking event in New Jersey in October 2005.

It is estimated that AIRROC members represent entities controlling 25% of current global run-off liabilities. The thirteen member Board of Directors is currently chaired by Jonathan Rosen of The Home in Liquidation with nearly

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A Roundtable Discussion AIRROC's New Dispute Resolution Procedure: Three Discuss the DRP's Past and Future

By James Veach, Mound Cotton Wollan & Greengrass

AIRROC delegates at the Rendez-vous learned about AIRROC's new Dispute Resolution Procedure during the educational sessions held on October 19, 2009. James Veach interviewed three AIRROC stalwarts who were members of the sub-committee that drafted the procedures. His interview focuses on the process, how we got there, and where the DRP is headed. AIRROC Matters thanks those interviewed for their time and candid comments. Our interviewees' opinions, of course, are theirs alone and do not necessarily reflect those of the organizations with which they are affiliated.

James Veach: How did the dispute resolution project get underway?

Michael Zeller: The genesis goes back to a March 2008 AIRROC Board

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The Rendez-vous 2009



From education panels to the Gala Dinner, see these and other AIRROC photos inside.



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Second Rendez-vous Issue



On behalf of AIRROC's Publications Committee, I'm delighted to bring you our second Rendez-vous special edition, which focuses on our commutation event programs and attendees that supplied the buzz for our annual New Jersey gathering. This issue also highlights AIRROC's 2009 accomplishments, including: (1) our year-round and year-ending educational programs and (2) AIRROC's new Dispute Resolution Procedure.

If you would like additional copies of the Rendez-vous issue, please e-mail or call Trish Getty. In addition to all else she does, Trish also oversees the advertising in AIRROC Matters. If you want to reserve advertising space for the coming year, please speak to Trish as soon as you can.

I want to thank all of our hard-working Publications Committee members for their efforts this year. I extend a special thank you to our Rendez-vous edition team: Bina Dagar (Ameya Consulting, LLC); Peter Scarpato (Conflict Resolved, LLC), Teresa Snider (Butler, Rubin, Saltarelli & Boyd LLP), Gina Pirozzi (G. Pirozzi Consulting), Nicole Myers and Jean-Marc Grambert (Myers Creative Services), and James Veach and Greg Wyles (Mound Cotton Wollan & Greengrass).

As always, your Committee welcomes your input and ideas for future features or articles. And if you don't know who we are, see some of our smiling faces on page 10.

Best wishes for a healthy and prosperous 2010.

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Tribute to Patrick J. Foley

The insurance industry has lost an icon, Patrick J. Foley. Pat was well-known for his career of 32 years with AIG, including his many years as General Counsel. But most importantly, he was a mentor, advisor, friend, Gaelic teacher and generous donor to many. Pat will be remembered as one of the best Irish storytellers; no one could recall and tell a story better than he. A personal story of our friendship and example of how Pat cared about his friends: A few years ago, Pat knew that I was going to have surgery. On the very night I returned home from the hospital, my phone rang: "Trish, Pat. How did you come out?" "All went well, Pat" I answered, "and where are you?" "China," he replied.



Patrick J. Foley and Trish Getty (AIRROC) at Trish's birthday dinner June 20, 2003

I am incredibly fortunate to count Pat Foley as one of my best friends and mentors. He will be sorely missed.

-Trish Getty

Rendez-Vous 2009

AIRROC® Matters

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Publishing and editorial decisions are based on the editor's judgment of the quality of the writing, its relevance to AIRROC® members' interests and the timeliness of the article.

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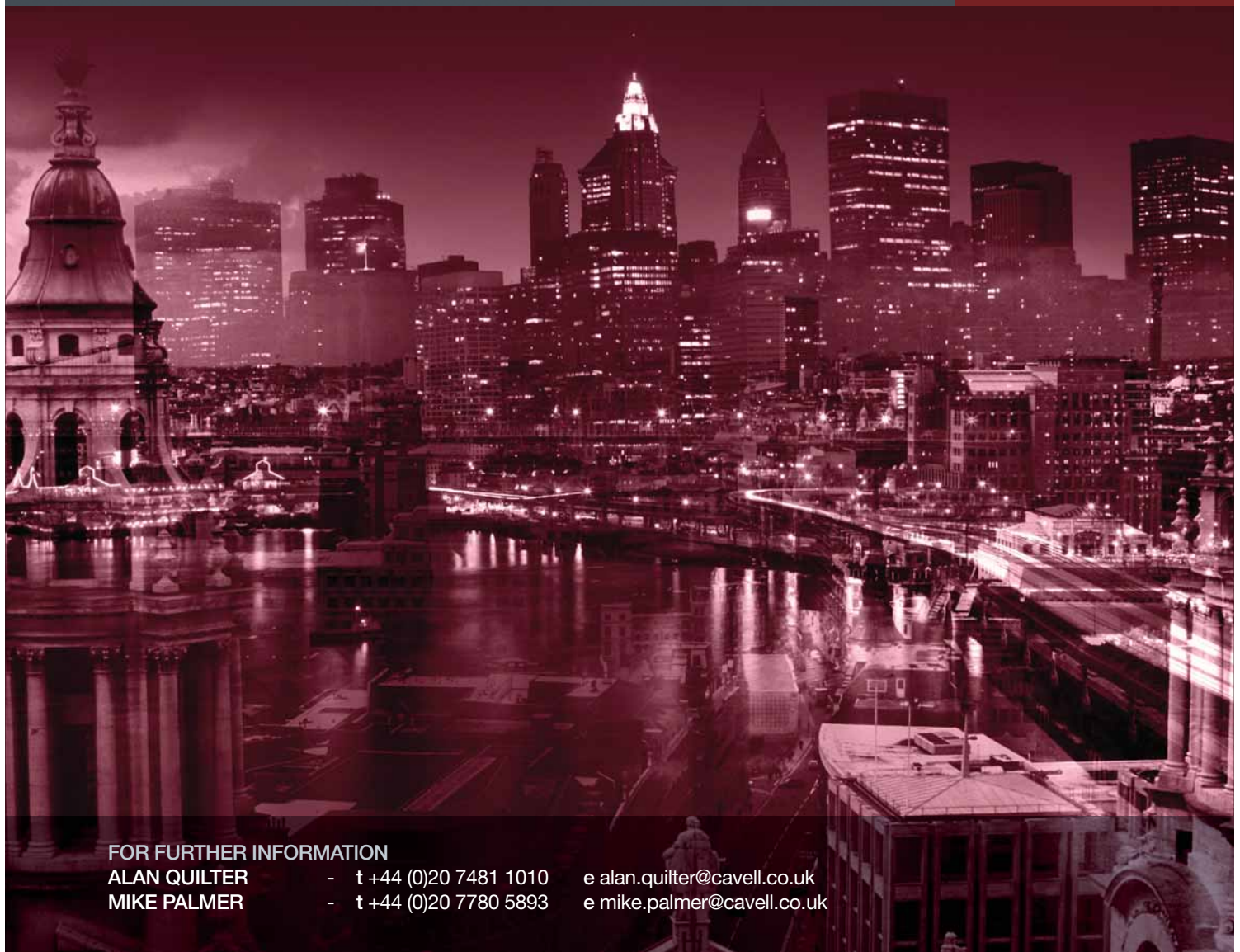
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Keynote Address by Regis J. Coccia Editor of Business Insurance

By Bina T. Dagar, Ameya Consulting, LLC

Commenting on the overall market condition of the run-off industry, Mr. Coccia noted that it has quietly become a significant portion of the insurance market, comprising billions in outstanding liabilities. He praised AIRROC for bringing innovation to the run-off industry and saluted the organization for encouraging resolution through commutations. One only needs to look at the ongoing side to evaluate the run-off business. Compared to the lingering economics of the global market, he noted that run-off offers stability; after all, given the current state of the market, today's liabilities could become discontinued business tomorrow.

...Mr. Coccia noted that it [the run-off industry] has quietly become a significant portion of the insurance market...

Against this bright future for run-off, ongoing business is experiencing soft market conditions; rates are flat across most lines and expected to renew at expiring terms. This is especially true for Property unless we experience catastrophe losses. For Casualty, rates are competitive. Non-D&O rates are unfavorable; and D&O rates (outside of FI), are at 2001 levels. Worker's Compensation premiums are down due to decline in payroll, the basis used to rate this line of business; and Professional Liability premiums have decreased as well.

Within this grim scenario, redundant reserves are tapped out, and the non-life industry capital is absorbing shocks. Even though solvency is not a major concern, companies have to be vigilant in managing capital. On one hand, there would have to be a \$50 billion loss like Katrina for the market to harden. On the other, the future offers no big premium increases.

Even though solvency is not a major concern, companies have to be vigilant in managing capital.

On a bright note, until 2008, the insurance/reinsurance industry took a back seat to other financial industries.



Regis J. Coccia, Editor of Business Insurance and Keynote speaker

Today, its stability and its ability to manage risk through strong focus on enterprise risk management is attracting capital. Therefore, insurance industry balance sheets will remain relatively strong.

Mr. Coccia predicts a likely consolidation within the marketplace. However, conditions remain unfavorable due to a difficult operating environment such as a credit crunch and fewer buyers. Bermuda companies are trading at or below book value. Financing for deals is not easy today; this difficult operating environment has to change. Recovery may not be V-shaped, but W-shaped or saw-shaped. He forecasts an economic recovery of 1.6% in the U.S.; 0.5% in Europe and 6% in Asia, concluding that there are not many safe harbors to park premiums.

The P&C business has suffered from poor underwriting decisions and use of investment as a crutch; but this cannot continue given the volatile equity market and limited investment yield. The time has come to price risks correctly. Additionally, assets used to pay casualty losses don't take inflation into account. Mr. Coccia suggests that companies ought to consider this factor when underwriting and for claims payments.

As regards litigation, he sees a long pipeline of D&O losses from sub-prime mortgage losses. As mass torts

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AIRROC Person of the Year: Barbara Murray



Left: Kathy Barker (Pro IS), Barbara Murray (Kemper Insurance Companies). *Middle:* 2009 AIRROC Run-Off Person of the Year Barbara Murray. *Right:* AIRROC Chair Jonathan Rosen (The Home Ins. Co. In Liquidation), Nigel Montgomery (Sidley, Austin & sponsor of the award), Barbara Murray (Kemper Insurance Companies) and Kathy Barker (Pro IS)

By Jonathan Rosen, The Home Insurance Company in Liquidation

At AIRROC, we appreciate the many dedicated and talented people who contribute to both the success of our organization and the run-off industry as a whole. In keeping with our annual tradition of recognizing an individual worthy of special accolade in the run-off arena, it was our honor and privilege to present Barbara Murray with the 2009 AIRROC Run-Off Person of the Year award at the recent AIRROC Commutation and Networking event.

In her capacity as Senior Vice President of Reinsurance at Kemper Insurance Companies, Barbara embodies the true run-off spirit in her dogged pursuit of protecting and preserving Kemper's reinsurance asset. Indeed, through her relentless efforts, Barbara has been credited as one of the guiding lights behind Kemper not having succumbed to liquidation – a tribute for which Kemper's creditors should be eternally grateful.

... Barbara embodies the true run-off spirit in her dogged pursuit of protecting and preserving Kemper's reinsurance asset.

Barbara was born in Germany and raised in Chicago by a single mother who plied her to trade in the high-end jewelry design business and instilled in Barbara a work ethic that underscores her being. Believing that it would

be a short term position, Barbara's foray into the run-off world commenced in 1986 when she joined Argonaut Insurance Company to assist in the closure of a medical malpractice book. That position, however, evolved into a seventeen year tenure, which saw Barbara ultimately ascending to Executive Vice President of Insurance Run-Off Consultants, a division of Argonaut, where she was responsible for running off both ceded and assumed long-tail exposures.

With her unique personality that thrives on the challenges inherent in discontinued operations, Barbara is acutely sensitive to relationships and the need to be fully versed in the contractual and factual underpinnings of her charge. Those attributes have stood Barbara in good stead and led to her recognition as a force to be reckoned with by her present employer, who painstakingly courted her for two years before she accepted her present role.

With her unique personality that thrives on the challenges inherent in discontinued operations, Barbara is acutely sensitive to relationships and the need to be fully versed in the contractual and factual underpinnings of her charge.

Barbara's best reflection can perhaps be gleaned from her volunteered self-definition for purposes of the

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AIRROC Person of The Year *Continued from Page 9*

AIRROC Run-Off Person of the Year award presentation:

- 3 words that will never be heard to describe Barbara – passive; ambiguous; mellow.
- 3 things nobody knows about Barbara – she cheats at pool; her hair color; her study of psychology and criminal justice with the goal of reforming juvenile delinquents.
- 3 best pieces of advice that advanced Barbara’s career – read the entire contract; know that there is always room for improvement; final does not always mean final.
- 3 things to consider for the future – if we cannot have world peace, how about a few less disputes; let the positions we take today not haunt us in the future; positive attitudes conquer everything.
- 3 traits of Barbara that everyone will agree – proactive; persistent; passionate.

The woman behind the award was also tellingly revealed in her acceptance speech, where Barbara listed the 8 great things about working in run-off (cut back from 10 because, after all, run-off requires an element of savings):

- 8 You get to learn from other people’s mistakes, which is a lot less painful than learning from your own.
- 7 Claims people finally get the good offices.
- 6 Every day is like Christmas, you never know what is going to be in the box you are about to open.
- 5 It’s easy to maintain your diet because brokers stop taking you out.
- 4 Your skill set really is in demand.
- 3 You get to travel to exotic locales, like East Brunswick, for conferences.
- 2 You get to go to AIRROC and hang out with the problem solvers of the industry.
- 1 Knowing that the decisions we make and solutions we implement will have significant and lasting impact on the insurance and reinsurance industry.

And so we salute a workout artist par excellence and once again congratulate Barbara for her high level of achievement in the rough and tumble and often thankless world of run-off. n

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Left to right: Maryann Taylor (Boundas, Skarzynski, Walsh & Black, LLC), William Maher (Wollmuth, Maher & Deutsch LLP), Teresa Snider (Butler Rubin Saltarelli & Boyd LLP) Ali Rifai (Zurich), Paige Waters (Sonnenschein Nath & Rosenthal LLP), Nick Pearson (Edwards Angell Palmer & Dodge LLP), Bina Dagar (Ameya Consulting, LLC), James Veach, (Mound Cotton Wollan & Greengrass), Michael Walsh (Boundas, Skarzynski, Walsh & Black, LLC). *Not pictured:* Peter Scarpato (Conflict Resolved, LLC), Jonathan Bank (Locke Lord Bissell & Liddell LLP), Nigel Curtis, Francine Semaya (Nelson Levine de Luca & Horst LLC), Vivien Tyrell (Reynolds Porter Chamberlain LLP), Nick Williams (Clifford Chance)

Women's Networking Luncheon

Ladies Who Launch



Left to right (row 1): Michele Watson (Paragon Strategic Solutions) and Featured Speaker Deborah Giss Stalker (ACE Group), Trish Getty (AIRROC CEO & Executive Director) and Deborah Giss Stalker, luncheon attendees Paige Waters (Sonnenschein) and David Grady (Paragon Strategic Solutions), (row 2) Renate Schaper-Stewart (Hannover Re), recipient of AIRROC drawing of "The Snowball", Michele Watson (Paragon Strategic Solutions) presenting gift to Renate Schaper-Stewart

By Teresa Snider, Butler Ruben Saltarelli & Boyd LLP

The Women's Networking Lunch at the AIRROC/Cavell Commutation Event drew a crowd of one hundred men and women. Trish Getty, CEO and Executive Director of AIRROC, welcomed guests and introduced Deborah Giss Stalker and Michele Watson to speak about the launch of the AIRROC Mentoring Resource Program. Deborah Giss Stalker is Associate General Counsel, Global Reinsurance, of the ACE Group. She is a member of the Mentoring Committee of the ACE Women's Forum and was part of a group that established a mentoring program for the women of ACE in North America. Michele Watson is a senior vice president with Paragon Strategic Solutions, and also a passionate advocate of mentoring.

Trish Getty... introduced Deborah Giss Stalker and Michele Watson to speak about the launch of the AIRROC Mentoring Resource Program.

To encourage attendees to participate in the Mentoring Resource Program, the co-speakers described the mentoring process generally, as well as their specific experiences with mentoring. Deborah Giss Stalker described the mentoring program established by the ACE Women's Forum, and explained the challenges faced in a program such as ACE's where the mentees choose their own mentors. To help mentees feel more comfortable with approaching a prospective mentor, ACE hosts roundtables so that mentors and mentees can meet in an informal setting – with wine and cheese – to become acquainted. By contrast, Paragon's system matches mentors with mentees. Michele Watson noted that the mentoring relationship tends to work better if there are no reporting lines between a mentee and her mentor, but since Paragon is a small company this is sometimes difficult to ensure.

The speakers encouraged the men and women present at the luncheon to fill out the mentor application.

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Rendez-vous

Panel 1

Offset Issues

Left to right (row 1): Mike Zeller (AIG), Kathy Barker (PRO IS), Jonathan Bank (Locke Lord Bissell & Liddell); (row 2) Panelists Bill Barbagallo (Navigant Consulting), Don Mros (Chadbourne & Parke), Jim Moran (RFML), Paul Bugden (Clyde & Co.), Timothy Corley (Paragon Strategic Solutions), Lawrence Greengrass (Mound Cotton Wollan & Greengrass).



By Teresa Snider, Butler Rubini Saltarelli & Boyd LLP

Lawrence Greengrass of Mound Cotton Wollan & Greengrass moderated a panel on offset issues. Joining Mr. Greengrass on the podium were Tim Corley (Senior Specialist, Paragon), Paul Bugden (Clyde & Co.), Bill Barbagallo (Managing Director, Insurance Claims, Navigant Consulting Inc.), Jim Moran (Director, Reinsurance Finance Management Limited), and Don Mros (Chadbourne & Parke LLP).

To begin the discussion, each panel member described how he thought about offset. Tim Corley explained that, as an accountant, his approach to offset is a practical one – what you owe me as opposed to what I owe you. Paul Bugden’s perspective is one of English law, under which “offset” is an agreement between the parties to engage in net accounting while “setoff” is a legal defense to a claim, and is limited to claims arising under the same contract or closely related contracts. In Jim Moran’s experience, offset generally comes up as a last-minute delaying tactic and is used as a negotiation tool. Don Mros discussed the difference between recoupment (netting balances owed on the same contract) and setoff (netting balances owed on separate contracts). Bill Barbagallo concluded

the introductory remarks by discussing his experience with offset issues in receiverships, and the need for an extensive reconciliation process.

...each panel member described how he thought about offset.

The panelists then discussed legal issues, with Don Mros pointing out the need to review the particular state statute if the offset issue arises in the context of an insolvency proceeding. Bill Barbagallo concurred, but noted that administrative orders may clarify how the statute will be interpreted and pointed to the Transit liquidation as an example.

Mr. Greengrass then asked the panel about the importance of contract wording to the issue of offset. In Mr. Moran’s experience, individual contracts are not as important as pragmatic considerations. Messrs. Corley and Bugden agreed that parties will generally take a commercial approach to offset issues. Mr. Barbagallo commented that some companies take different positions

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Panel 2

Dispute Management: Overview of New AIRROC Dispute Resolution Procedure



(Left to right): Chris Pillar (Resolute Mgmt. Services), Karen Amos (Resolute Mgmt. Services, AIRROC Board Member, AIRROC Co-Chair Education Committee), Robert M. Hall (RMH), Debra Hall (Hall Arbitrations), Jonathan Bank (Locke Lord Bissell & Liddell LLP); center top: Peter Scarpato (Conflict Resolved, LLC, AIRROC Matters Editor-In-Chief); center bottom: Moderator Mike Zeller (AIG). Right picture (left to right): Steven Schwartz (Locke Lord Bissell & Liddell LLP), Clive O'Connell (Barlow, Lyde & Gilbert), Andrew Maneval (Chesham Consulting, Founding AIRROC Chairman)

By Peter Scarpato, Conflict Resolved, LLC

This panel discussion, moderated by Michael Zeller with Peter Scarpato, Andrew Maneval, Clive O'Connell and Steven Schwartz, discussed and answered audience questions on AIRROC's new Dispute Resolution Procedure ("DRP"). Initially, the panel presented an overview of the DRP's key elements: especially designed for small disputes with little or no discovery; arbitrator must agree to a \$150 per hour fee; live hearing only with consent of the parties; no preclusive effect on future disputes; and, if the parties cannot agree on the selection of the sole arbiter, a random selection procedure with swift appointment.

Next, the panel briefly outlined both the DRP's benefits and types of cases for which it was designed. Benefits of the DRP: reduces parties' arbitration costs given the \$150 per hour arbitrator rate and anticipation that outside counsel may not be necessary; simplifies and expedites the arbitrator selection process; requires an organizational meeting within 21 days of arbitrator selection; sets a presumption against discovery, motions for preliminary relief and live hearing testimony; and reduces parties' ability to

"game" the arbiter selection process. Although certainly having room for expansion to larger, more complex cases, the DRP was primarily designed for cases involving \$1 million or less in dispute; the cession of losses from one or a small number of claims; discrete legal issues and relatively uncomplicated factual issues. The DRP is least applicable to cases requiring three panel member consideration, experts, complex actuarial analyses, attorney-client or work-product issues with possible in camera reviews, or voluminous discovery.

Although certainly having room for expansion to larger, more complex cases, the DRP was primarily designed for cases involving \$1 million or less in dispute...

At this point, the panel was asked a series of questions by both Michael Zeller and the audience. Why will the DRP succeed where other small case dispute mechanisms have not? The panel responded that, while all

continued on page 36



We put the pieces together



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Panel 3

Commuting Reinsurance Agreements Before, During, and After the Sale of Run-off Business



(Left to right): Steve Ryland (PRO Insurance Solutions), Teresa Snider (Butler Rubin Saltarelli & Boyd LLP), Richard Rutty (Resolute Mgmt. Services); center top: James Veach (Mound Cotton Wollan & Greengrass); center bottom: Moderator Ali Rifai (Zurich, AIRROC Board Member & Publications Committee Chair), Attendees

By James Veach, Mound Cotton Wollan & Greengrass

Moderator Ali Rifai, Associate General Counsel for the Zurich Group's Centrally Managed Business, led his panel through a lively tour of commutation in the context of the sale and purchase of discontinued lines and insurance/reinsurance companies in run-off.

Moderator Ali Rifai...led his panel through a lively tour of commutation in the context of the sale and purchase of discontinued lines and insurance/reinsurance companies in run-off.

Beginning with a power point captioned "Motivation for Pre-Sale Commutation," Steve Ryland (PRO Insurance Solutions) set out the assets (investment and reinsurance-related), liabilities (insurance and non-insurance-related), and operating costs for AIRROC, Inc., a run-off entity to be sold. Mr. Ryland walked through AIRROC Inc.'s sale from the seller's perspective.

Mr. Ryland then proceeded counterclockwise through his power point discussing the target Company's assets,

liabilities, and operational costs from the perspective of the CEO of Run-off Acquisition, Ltd. Mr. Ryland reviewed how these different assessments would affect any commutation offers contemplated before or after AIRROC, Inc.'s sale.

Acting for the buyer, Teresa Snider (Butler Rubin Saltarelli & Boyd LLP) wondered aloud about AIRROC Inc.'s uncommuted contracts and asked why certain contracts remained open. Ms. Snider wanted to know about warranties and representations made during commutation discussions. She also asked about common account coverage and whether any commuting partner was teetering on the brink of insolvency.

Ms. Snider ticked off other questions and concerns that she imagined the CEO of Run-off Acquisition would raise. She asked to see AIRROC, Inc.'s deal folders for commutations, both recently completed and currently contemplated. In response to moderator Rifai's questions about the ability to recover commuted IBNR liabilities, Ms. Snider cited two U.S. cases – each going in different directions – on whether these balances could be collected.

continued on page 37

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Panel 4

Panel on Capitalization and Estimation of Claims



Top: Jonathan Rosen (The Home Insurance Company in Liquidation); next row: Nick Pearson (Edwards Angell Palmer & Dodge), John Wardrop (KPMG), Matt Wulf, (RAA), Frank Kehrwald (Swiss Reinsurance America Corp, AIRROC Board Member)

By Nick Pearson, Edwards Angell Palmer & Dodge LLP

The Panel on Capitalization and Estimation of claims was moderated by AIRROC Chairperson, Jonathan Rosen, and included Frank Kehrwald of Swiss Reinsurance America Corp., John Wardrop of KPMG, Matt Wulf of the Reinsurance Association of America and Nick Pearson of Edwards Angell Palmer & Dodge, LLP. The panel members held a wide ranging and enthusiastic discussion on the pros and cons of estimating loss and IBNR reserves in the solvent runoff and insolvent contexts. The panel members were in accord that reinsurers should not be compelled to pay a liquidator based upon pure IBNR estimates. However, the moderator pressed the other panelists on estimating known losses in liquidations, suggesting that failing to do so unnecessarily extended the time to close an estate and resulted in a windfall for reinsurers. The panelists' view was that the wording of the reinsurance contracts should control and only losses whose value has been crystallized should trigger the reinsurance obligations.

The panelists' view was that the wording of the reinsurance contracts should control and only losses whose value has been crystallized should trigger the reinsurance obligations.

This same distinction between crystallized losses and estimated losses was also endorsed by the panelists in the context of policy buy-backs so that reinsurers would be billed for amounts tied to actual losses and not IBNR. There was also a discussion of how schemes of arrangement in the UK dealt with recoveries from reinsurers for estimated liabilities through commercial negotiations prior to implementation of the scheme. A number of audience members, reflecting the high level of professional experience in the room, posed questions and provided their own views on the estimation conundrum in runoff, emphasizing that estimation is a difficult but critical question. n

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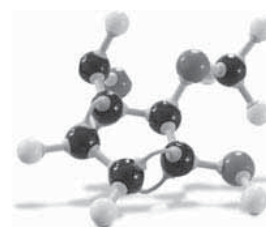
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Panel 5

How Do Run-Off Companies Address Key Aspects of their Business to Achieve Success



Clockwise from upper left: Francine Semaya (Nelson Levine de Luca & Horst), Terry Kelaher (Allstate Ins. Co.), Ann Duffy (ISIS Consulting), John Parker (TIG Ins. Co., AIRROC Board Member), Eric Haab (Lovells), session attendees, a packed house

By Bina Dagar, Ameya Consulting, LLC

Moderated by Eric Haab, the panelists, Ann Duffy (ISIS Consulting), Terry Kelaher (Allstate), John Parker (TIG Insurance), and Francine Semaya (Nelson, Levine, de Luca & Horst) frankly discussed their respective company's formula for success.

With only minor variations, they all agreed about a successfully run Run-Off operation. Here's what they had to say:

...the panelists...discussed their respective company's formula for success.

Maintaining Motivated Competent Staff: With an estimated 25-year tail of the run-off business, Allstate, ISIS Consulting, and TIG have the following pointers for retaining staff:

- Attractive offices and working conditions;
- With complex claims spilling into the run-off industry, it's important to have qualified, skilled employees to handle such matters who are knowledgeable of run-off entity issues;

- Maintain competitive compensation and bonus program, so staff can share the upside and be motivated – this provides continuity when shrinking business poses a challenge to holding staff;
- Foster team spirit, a collective unit for the common goal of the company;
- Communicate goals and circumstances and motivate with accurate information to engage staff support in good and bad times;
- Maintain a flexible environment, such as part-time work, for senior members of staff;
- Boredom can cause neglect – to keep retention high, challenge staff by involving them in strategic planning, due diligence work in acquisition of new operations etc., so that they feel rewarded

... Communicate goals and circumstances and motivate with accurate information to engage staff support in good and bad times ...

continued on page 38

Rendez-vous 2009 Gala Dinner



(Left to right): **1.** Standing: Dale Diamond (AXA Liabilities Mgrs.), Frank Kehrwald (Swiss Re), Marianne Petillo (ROM), Jeff Mace (Dewey & LeBoeuf), Karen Amos (Resolute Mgmt. Services), Joe DeVito (Navigant Consulting); (sitting) John Parker (TIG/Riverstone), Ed Gibney (CNA Global Resource Mgrs.), Janet Kloenhamer (Fireman's Fund), Keith Kaplan (Reliance Ins. Co. In Liq.). **2.** Standing: Doug Andrews (Kemper Ins. Co.), Mike Zeller (AIG), Barbara Murray (Kemper Ins. Co's.), Jonathan Rosen (The Home Ins. Co. In Liq.), Andrew Maneval (Chesham Consulting), Richard White (Integrity Ins. Co. In Liq.); (sitting) Trish Getty (AIRROC), Kathy Barker (PRO IS), Terry Kelaher (Allstate Ins. Co.), Jonathan Bank (Locke, Lord, Bissell & Liddell). **3** Standing: Michael Goldstein (Mound Cotton Wollan & Greengrass); (sitting) Klaus Kune (Hannover Re), Bob Peterson (Navigant Consulting), Nick Pearson (Edwards Angell Palmer & Dodge). **4.** Standing: Bill Bower (Scottish Lion),



Michael Dobias (Davies Arnold Cooper), Mike Walker (KPMG), Julie Ponsford (Cavell); *(sitting)* Dan Maranger (Munich Re), Paul Corver (R & Q Group), Richard Askey (Lloyds Banking Group), Alan Quilter (Randall & Quilter). **5.** *Standing:* Rod Perry (AXA Liabilities Mgrs.), Debra Hall (Hall Arbitrations), Nigel Montgomery (Sidley Austin), Pat Fee (Clarendon Ins. Group), Neal Wasserman (White Mountains Re Solutions), Ron Smillie (The St. Paul Travelers Co's.); *(sitting)* John Byrne (AXA Liabilities Mgrs.) Alex Scherer (AXA Liabilities Mgrs.), Robert Hall (RMH Consulting), Julius Bannister (Insurance Run-Off News). **6.** *Standing:* Brian Lajoie (Cavell America/Transport), David Rooney (Downlands Liability Mgmt.), Susan Grondine (Cavell America/R & Q Re), Michael Al-Hussainy (Cavell America/R & Q Re), Vincent Potts (Global Re); *(sitting)* Freddie Acevedo (Assurant), Kevin Apple (Cavell America/R & Q Re), Mike Fitzgerald (CNA Global Resources).

Rendez-vous 2009 Gala Dinner



1



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5

1. *Standing:* Rahul Mehta (Fireman's Fund), Anthony Lennox (Berwin Leighton Paisner), James Veach (Mound Cotton Wollan & Greengrass), Colin Johnson (R & Q Broking Services); *sitting* Glenn Frankel (The Hartford), Mike Palmer (R & Q/Cavell), Julie Jordan (Cavell), Christine Michals (CNA Global Resource Mgrs.). **2.** *Standing:* Steve Goodlud (KPMG), Ian Clark (Deloitte & Touche), Andrew Oughton (Insurance Co. Ltd.); *sitting* Robert Omrod (Brandywine Group), Nicholas Scott (The Hartford), Jody Iverson (Paragon). **3.** *Standing:* Marcia Scheiner (Zurich), Colm Holmes (Zurich), Ali Rifai (Zurich), Dominic Sharp (Zurich); *sitting* Patrick Tiernan (Zurich), David Kaston (Zurich), Oliver Horbelt (Munich Re). **4.** *Standing:* John Conway (Kemper Ins. Co's.), Don Ballard (Arrowpoint), Kenneth Wylie (Sidley Austin), Joseph McCullough



(Lovells); *(sitting)* Diane Werner (Allstate Ins. Co.), David Coupe (Clyde & Co.), Beth Kraemer (Paragon), Richard Kissel (Kissel, Pesce). **5.** *Standing:* Francoise Gelot (Optimum Risk Research), Mitchell Gibson (AXA Liabilities Mgrs.), Eduardo Paternoster (The Travelers Co's.); *(sitting)* Bryina Starks (CNA), Elaine Webster (Återförsäkrings AB LUAP), Karen Micacci (The Hartford) **6.** *Standing:* Austin Thornton (Munich Re), Andre Lefebvre (Arrowpoint Capital), Marcus Doran (The Hartford), Robert Thomas (Trenwick America Reins. Corp.); *(sitting)* Nicole Burkiewicz (The Travelers Co's.), David Grady (Paragon).



Panel 6

The Changing Landscape in Run-Off Workers' Compensation



Left to right: Panelists: Karen Boisvert (Swiss Re Life & Health), Barry Biller (Transamerica Life Ins. Co.), Larry Lorenzen (Westport Ins. Co's./Swiss Re), R. Steven Anderson (Barger & Wolen), Co-chair of program: Jonathan Bank of Locke Lord Bissell & Liddell LLP

By Maryann Taylor, Boundas, Skarzynski, Walsh & Black LLC

The panel on the Changing Landscape in Run-Off Workers' Compensation Carve-Out was chaired by Barry Biller of Transamerica Life Insurance Company and Karen Boisvert of Swiss Re Life & Health America Inc. The panel for this session included Larry Lorenzen, Vice President of Westport Insurance Corporation, a Swiss Re subsidiary, and Steven Anderson, the managing partner of the New York office of Barger & Wolen LLP. The panel's discussion focused on the legislative and legal activity in the workers' compensation systems in California and New York and the impact these changes have brought about, including the challenges and issues affecting each jurisdiction.

Larry Lorenzen spoke about workers' compensation issues in California from the perspective of an excess insurer which he pointed out is equally applicable to reinsurers since both are critically dependent on whether the underlying carrier does a proper job handling the claim. Many of the current claims issues that frequently arise are attributable to the legislative reforms to the California workers' compensation statute, especially those enacted in 2004. Other issues that often arise relate to fact specif-

ic scenarios. Mr. Lorenzen provided an overview of the key legislative reforms in California and explained the implication of these changes and the impact on settlement strategies. The key changes outlined consisted of the following: (i) objective medical findings required for permanent impairments, (ii) the primary treating physician is no longer entitled to a presumption of correctness, (iii) employers can establish medical provider networks which utilize doctors and facilities that they select, (iv) employers can have a primary treating physician's requested care submitted to an independent review process, and (v) requirement that medical evaluators apportion multiple claims as to the causation of the permanent impairment.

Common fact specific factors that impact the claims were also discussed, such as the entity related issues. Associations or Joint Powers Authorities have

Many of the current claims issues that frequently arise are attributable to the legislative reforms to the California workers' compensation statute, especially those enacted in 2004.

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Co-chair of program: Kathy Barker of PRO IS, Inc

a fluctuating membership where members move in and out at times not corresponding to the policy or treaty period. Multiple entities under one corporate name and whether a specific entity is covered are other common issues that arise. Similarly related is the issue of which entity has assumed the liability for the workers' compensation claims in the context of a sale, merger and/or acquisition.

Portfolio transfers of claims also present potentially troublesome issues where the acquiring entity does very little claims adjudication because the transaction is often viewed as a financial transaction.

By and large, the impact of the California legislative reforms so changed the landscape for workers' compensation claims that the uncertainty translated into an increased appetite for settlement. Claimants and their attorneys could no longer count on business as usual and were much more receptive to settlements. The uncertainty of whether a claim could meet the objective medical evidence standard, as well as the opinion of the primary treating physician no longer being irrefutable contributed to the situation. Many of the reform oriented issues and the fact specific issues present a commutation opportunity under the general rubric of claims management. If a cedent or TPA is not using these tools to investigate workers' compensation claims it may provide grounds to open up commutation discussions.

By and large, the impact of the California legislative reforms so changed the landscape for workers' compensation claims that the uncertainty translated into an increased appetite for settlement.

Steven Anderson discussed the New York system of workers' compensation claims which, although not experiencing the legislative reform overhaul of California, was severely challenged by the events of September 11th. The aftershocks of this catastrophe are still being felt and New York's response was to adjust and adapt the workers' compensation system to address the financial

impact on survivors, those injured in the attack itself and those who have suffered, or will yet suffer occupational disease from their participation in the rescue, recovery and clean-up. The scale of loss and the public attention to the compensation issues produced the need to change the rules which was accomplished by a combination of legislation, Executive Order and regulatory changes.

Steven Anderson discussed the New York system of workers' compensation claims which, although not experiencing the legislative reform overhaul of California, was severely challenged by the events of September 11th.

The scale of the loss was enormous – 11,627 workers compensation claims were filed; 2058 of which were death/survivor claims, a load equal to 10 years of normal workers' compensation covered deaths. Mr. Anderson explained that to meet the challenges of this monumental event, the thirty day filing deadline, notice requirements and the requirement for death certificates were all suspended. In 2006, changes were made that enabled workers to submit claims after the expiration of the two year statute of limitations, to resubmit for further reconsideration claims previously denied by application of the old limitations period. As part of the same legislation, rescue, recovery and clean-up ("RRC") personnel who had retired from service could have their retirement status reclassified as accidental disability if they were diagnosed, post retirement, with diseases caused by their World Trade Center ("WTC") work.

Also in 2006, the legislature passed legislation establishing a registration procedure enabling RRC workers to register by August 2008 and thereby preserve their right to seek benefits should they later develop diseases attributable to their work at the WTC site. Over 40,000 people have registered so there is a large potential pool of claimants. Also, there was an expansion of benefits on a one time basis for September 11th claims in which benefits were provided to domestic partners and non-worker volunteers.

The overriding lesson is that workers' compensation is both a form of insurance and a government driven social welfare program. The workers' compensation system is in the hands of elected officials. This inherent character makes it highly susceptible to public pressure, particularly in times of social or economic stress. n

A Roundtable Discussion **Continued from Page 1**



Andrew Maneval Peter Scarpato James Veach Michael Zeller

of Directors meeting and an item added to the agenda by Jonathan Rosen, AIRROC’s Chairman. Jonathan initially raised the issue in terms of a “small claims court.” Jonathan asked me to get involved and to work with AIRROC’s Legislative/Amicus Committee, which formed a Small Claims Task Force shortly thereafter.

In addition to Andrew, Peter, and me, Jonathan Bank, Kathy Billingham, Lloyd Gelwan, Bill Littel, John Parker, and Jim Sporleder served on the task force. Each of them made a major contribution. The project was a team effort all the way.

Andrew Maneval: We talked generally and informally of a procedure for achieving a principled resolution of small balance disputes while I was AIRROC Chairperson, but not with the structure we had after Mike headed up the sub-committee.

James Veach: What surprised you the most about this process? Which issues were the most difficult to resolve?

Peter Scarpato: The diversity of views on the sub-committee comes to mind, although perhaps I shouldn’t have been surprised given the varied experience of the sub-committee members. It took longer than I thought it would to get the concept on paper, but looking back perhaps I shouldn’t have been surprised about that either. Certainly we got the best of everyone’s input.

Michael Zeller: Two substantive issues jump out: (1) discovery; and (2) arbitrator compensation. On discovery, some members of the task force thought that the arbitrator had to be empowered to resolve discovery disputes; others thought we should have no discovery at all.

Two substantive issues jump out: (1) discovery; and (2) arbitrator compensation.

We wound up with a compromise of sorts whereby the DRP first looks to the parties to reach agreement on the extent of discovery and craft their own discovery resolution procedures, but the DRP also allows the arbi-

trator to ask for specific documents that the arbitrator feels he or she needs to resolve the dispute.

With respect to compensation, some members thought there should be no restriction on arbitrator compensation; others thought that the arbitrators should serve pro bono. We wound up with the requirement that an arbitrator agree to serve at

\$150 an hour, which is well below market rate, but not pro bono.

Andrew Maneval: Mike captured the two big issues with which the task force wrestled.

James Veach: Will arbitrators serve for \$150 an hour?

Andrew Maneval: I think they will. First, this is a matter of service to the run-off business. The opportunity to resolve big issues involving small balances will inspire arbitrators to come forward. Second, we have a pool of ARIAS and other arbitrators out there looking for experience. The DRP gives them a chance to get that experience.

Michael Zeller: Building on Andrew’s comment about service to the industry, the parties who use the DRP must necessarily come together to get to the point of being able to agree on arbitration parameters. I think that acting as an arbitrator for parties who are mature enough to get to that point will appeal to arbitrators. Serving as a DRP arbitrator may be more attractive than serving on a three-person panel engaged in the take-no-prisoners arbitrations that we see every day.

We now have thirty-six AIRROC arbitrators in our data base, twenty-seven of whom are ARIAS certified. That reflects that we have a pool of candidates willing to serve for \$150 an hour.

Peter Scarpato: As an arbitrator in many hard fought disputes, the opportunity to be the sole decision maker, rather than one of three referees in what Mike describes as a “blood bath,” is exciting. I believe other arbitrators will similarly enjoy the chance to deal with people serious about wanting to resolve issues on their merits swiftly and professionally.

James Veach: That flows right into a question about ARIAS. You are all ARIAS certified arbitrators. Any feedback from ARIAS about the DRP?

Andrew Maneval: I notified certain ARIAS board members about the procedures when the sub-committee got underway. There have been periodic discussions

since then. ARIAS has not taken any formal action with respect to the procedures.

James Veach: What about ARIAS certification and re-certification? Could service as a DRP arbitrator satisfy some of the ARIAS certification requirements?

Andrew Maneval: Some of the ARIAS certification criteria require three-day evidentiary hearings and the DRP is not designed for that purpose. On the other hand, the DRP would provide useful, basic arbitrator experience.

James Veach: Are there any plans to do any joint AIRROC-ARIAS presentations?

Andrew Maneval: The November 2009 ARIAS annual meeting included discussing a presentation from AIRROC board member John Parker on a panel discussing “Economies of Scale: Arbitrating Small Dollar Disputes.”

James Veach: What are the current plans for the DRP? What are the next steps?

Michael Zeller: There are two methods of selecting an arbitrator, one of which has the parties agreeing on an arbitrator from the beginning and the other in which AIRROC randomly selects names for the parties to choose from. We understand that one DRP proceeding is already underway with an arbitrator that the parties agreed on. We're off and running.

There are two methods of selecting an arbitrator, one of which has the parties agreeing on an arbitrator from the beginning and the other in which AIRROC randomly selects names for the parties to choose from.

Peter Scarpato: The next step will be many people using the process. This was a good time to launch the DRP with the emphasis on less costly methods to resolve disputes, including mediation.

Michael Zeller: We're also looking forward to seeing parties entering into master agreements to use the DRP, in other words, agreeing to submit future disputes for resolution.

Andrew Maneval: And I am sure that the procedures will be updated, improved upon, and reviewed by the appropriate AIRROC sub-group.

James Veach: Where do our readers go for a nutshell treatment of the DRP?

Peter Scarpato: The AIRROC website portal is the

place to look first.

Michael Zeller: Yes, the website is the place to go. Trish Getty is the official AIRROC contact and those interested can also call or email any of us.

James Veach: If I asked each of you to look ahead one year, how many disputes will have been submitted to the DRP? Best guess may qualify for a prize.

Andrew Maneval: Fifteen.

Peter Scarpato: Twenty.

Michael Zeller: Time will tell, but AIRROC has clearly given its members and others a new option to consider.

Andrew Maneval: That's a good answer, but you don't qualify for the prize.

Peter Scarpato: If the number of meetings and commutation discussions at the AIRROC Rendez-vous are any indication of the number of potential disputes to be resolved, then we will see the DRP used often (and well).

If the number of meetings and commutation discussions at the AIRROC Rendez-vous are any indication of the number of potential disputes to be resolved, then we will see the DRP used often (and well).

Parties are often terribly frustrated by the time it takes to get a full panel arbitration underway. With the DRP, the parties can get before an arbitrator in twenty-five to thirty days.

James Veach: Thank you for the interview and – on AIRROC's behalf – thank you for your efforts to get the DRP up and operating. ⁿ

James Veach is a Partner at Mound Cotton Wollan & Greengrass and can be reached at jveach@moundcotton.com.

Andrew Maneval is President of Chesham Consulting, LLC, providing arbitration and consulting services to the insurance/reinsurance industry and can be reached at andrewmaneval@gmail.com.

Peter A. Scarpato is a full-time arbitrator, mediator, and President of the Re/Insurance Mediation Institute, Inc. (“ReMedi”) and Conflict Resolved, LLC and can be reached at peter@conflictresolved.com.

Michael Zeller is an ARIAS' U.S. certified arbitrator and currently serves as Chief Reinsurance Compliance Officer of American International Group, Inc., and can be reached at michael.zeller@aig.com.

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Education Can Be Fun: The AIRROC Classroom in 2009 (Plus Enter Our Competition For \$100 Prize)

By Karen Amos, Resolute Management Services

Since the initial concept of AIRROC, education has been high on the agenda. The AIRROC Board has always believed that education is a key component of what the organization can give back to its membership in the “value for fees” equation. As co-chairs of the Education Committee, Kathy Barker and I hope you agree that AIRROC’s 2009 education program provided value to the membership through the topical sessions delivered this year.

We want to extend a big **thank you** to all our presenters who dedicated their time – and often their firms’ resources – to that program. We also thank our fellow education committee members for their input this year.

The AIRROC board has always believed that education is a key component of what the organization can give back to its membership in the “value for fees”

No fewer than fifty-one presenters shared their knowledge and experience with the members. In addition, in 2009 AIRROC arranged regional education sessions in Chicago and Boston. This allowed company employees who may not have been able to travel to quarterly membership meetings in New York to participate in our programs. Art Coleman and Pro Insurance Solutions organized the sessions, and AIRROC was provided resources by local law firms – Lovells and Choate Hall. A big thank you goes to all of them for their input.

And was it fun? Sure . . . I mean where else could you have:

- won that unique Canadian goodie bag? (Thanks Elaine Collier);
- watched the movie premiere of that AIRROC Indie: “The Life-cycle of a London Recovery” starring an all star, all-Resolute Management Services Ltd. cast. This movie featured that key broker accessory – the broker file suitcase – and featured that vision of love-
liness – the City pub; need a reminder?



- and debated that well known adage, “To arbitrate, mediate or negotiate... that is the question.”

We should also not forget that the 2009 program:

Taught Us About

- asbestos liabilities (UK EL);
- the Canadian marketplace and European Solvency II; and
- the changing landscape of Workers Compensation Carve-out.

Pointed Us In The Right Direction On

- leveraging recoveries from London and selecting appropriate dispute resolution mechanisms;
- actuarial mystique;
- use of off-set and some key considerations toward managing run-off successfully.

Got Us To Think About

- the pros and cons of estimation and crystallization of potential future losses; and
- buyers’ and sellers’ views on commutations throughout the acquisition lifecycle.

continued on next page



Brought Us

- Sidley Austin's Global Broker and Underwriter Capital Survey and
- AIRROC's Dispute Resolution Procedure.

We should also not forget that the 2009 program... brought us...AIRROC's Dispute Resolution Procedure.

Many of these presentations may be found on the AIRROC website (www.airroc.org) but here is a quick overview of this past year:

We learned from Michelle George (Chadbourne & Parke) that with respect to **UK asbestos claims**:

- the mesothelioma mortality rate in the UK is three to five times higher in middle age than in the USA;
- UK compensation for a mesothelioma claim is typically £125,000 to £150,000; and
- the recent UK EL trigger action determined that EL policies containing insuring clauses with "injury sustained" language should be interpreted in the same manner as policies containing "injury caused" language, *i.e.*, on an exposure basis. (That decision is now being appealed by the defendants (MMI, BAI, Excess, and Independent) with a ruling expected in early 2010).

Jason Russ and Tom Ryan from Milliman suggested that we pose the following **key questions to actuaries**:

Meanwhile, Elaine Collier from Omega General report-

- what type of range are we discussing – reasonable estimates or possible outcomes?
- what does the point estimate represent?
- how were the estimates made and what were the underlying assumptions?
- what data was used and does the data reconcile to the financials?
- did you recognize certain changes within our organization?
- how can we allocate results to individual contracts?

ed on **run-off from a Canadian perspective**. Ms. Collier advised that:

- there are currently seven domestic companies and twenty-one foreign branches in run-off in Canada today;
- upcoming Canadian regulatory changes will directly affect Canada's run-off business and how it is viewed/handled; and some of these changes may well facilitate foreign branch wind-ups (amendments to Part XIII of the Insurance Companies Act), which will take effect on January 1, 2010;
- the test as to whether a foreign insurer must be authorized by the federal regulator to conduct business through a branch in Canada will turn on whether the foreign company is insuring a Canadian risk. The test will no longer be where the risk is located, but rather where the insurance activities are carried out; and
- some foreign branches will no longer need to maintain an actual branch presence in Canada. At the same time, Ms. Collier reminded us of some common misconceptions about run-off in Canada, including whether:
 - it's difficult to exit Canada due to the prevailing regulatory environment;
 - it's better to leave Canadian business "as is" because

the timeframes for a completed run-off or exit are so long; and

- Canadian risks are hidden within portfolios outside Canada, particularly the U.S. and the UK and need to be addressed properly during the run-off of those portfolios.

With respect to **facilitating recoveries from London**, a panel of London Broker/Broker replacement services representatives pointed out that those seeking to collect should:

- be aware that London remains a subscription market and, therefore, a London broker (traditional or replacement) brings knowledge and experience of that market and the systems surrounding it;
- speaking to your London broker about tailoring the service you need helps;
- putting together comprehensive claims presentations pays off; and
- visiting London to pursue open dialogue and make a personal connection with your reinsurers is essential to your collection efforts.

...a panel of London Broker/Broker replacement services representatives pointed out that those seeking to collect should...be aware that London remains a subscription market and, therefore, a London broker (traditional or replacement) brings knowledge and experience of that market and the systems surrounding it...

Turning to the anticipated effort of **Solvency II**, and Debra Hall from Global Regulatory & Risk Consultants helped us to understand Solvency II identifying that it is applicable to all (re)insurance companies, independent of size, location, or legal status. Exempt from Solvency II are companies with annual premium income lower than EUR 5 million (approx. 7.2 million USD). Exemption does not equal “no regulation,” but rather specific regulation defined by individual EU Member States. Exempt companies may opt into Solvency II.

To accommodate differences between companies, Solvency II utilizes the Principle of Proportionality. Proportionality looks to the nature of the risks and the complexity and scale of the business. This principle applies to all provisions of the Solvency II Directive and needs to be taken into account in implementing it.

Supervision must also be carried out in a proportionate manner.

The Helix panel on **Solvency II** observed that one of its ripple effects could be that more companies will try to find solutions for their run-off portfolios and that this could generate a larger market for the reinsurance of such portfolios.

Sidley Austin’s Broker and Underwriter Capital Survey revealed that 91% of those who responded believed that the availability of capital would be an issue over the next twelve months. When asked why, respondents pointed to the anticipated erosion of existing capital due to poor investment return and rising claims payments, as well as the impact of currency movements on existing capacity.

On the **dispute resolution** front, three experienced dispute resolvers debated the merits of different dispute resolution techniques.

Arbitration

Pieter Van Tol suggested that arbitration maintains its value as a dispute-resolution device because the parties get adjudication from industry experts, who are generally able to fashion relief that fits with the realities of the industry. Mr. Van Tol conceded, however, that the process has become over-lawyered and needs to return to its original purpose – the swift resolution of problems by arbitrators who know the business.

According to Mr. Van Tol, arbitrators themselves can help fix the arbitral process by using a stronger hand. Arbitrators should, for example, be willing to sanction parties for bad faith or to limit discovery and motion practice. At the same time, arbitrators must recognize the limits of their powers and avoid exceeding the powers conferred to them.

Mediation

Peter Scarpato offered a list of four reasons why parties should consider mediation:

1. Mediators help parties identify underlying interests, the need for agreement, and the obstacles blocking agreement (*e.g.*, psychological, factual, process). Armed with this knowledge, parties may satisfy these interests and overcome obstacles with the mediator’s assistance.
2. Mediation is a less complex method of ADR.

continued on next page



Education Can Be Fun... Continued from Page 31

Mediation allows the parties to reach a settlement that serves their interests, moving the discussion from lawyer vs. lawyer to principle vs. principle.

3. Mediation reduces litigation costs. Lawyers spend less time preparing for and attending mediation, thus reducing discovery costs and intangible expenses and eliminating the aggravation, personal time, and emotional costs associated with litigation.
4. Research shows that parties have a higher level of satisfaction with mediated settlements.

Facilitated Negotiation

Andrew Maneval discussed “facilitated negotiation,” which involves considerable overlap between arbitration and mediation. With a “facilitated negotiation,” the parties can reap many or most of the benefits of mediation privately, IF they are ALL of the following: thoughtful, collaborative, cooperative, creative, open-minded, good communicators, focused on an exchange of information and interests, and – most importantly – dedicated to making the process work.

Andrew Maneval discussed “facilitated negotiation,” which involves considerable overlap between arbitration and mediation.

With “facilitated negotiation,” the parties can focus on a specific issue or bring in other related (or unrelated) matters, depending on what may be the best way to resolve a dispute. In the reinsurance business, similar problems can emerge repeatedly over time. Having a longer-range or broader perspective is often useful, e.g., by seeking agreement on both ceded and assumed matters, rules governing future cessions, future business, amending the terms of other contracts or commutation agreements in order to bring finality to the contractual relationship in general. Negotiations, like many other aspects of the reinsurance business, are based on and can be used to enhance important relationships over the longer-term.

Whereas ordinary negotiation finds ways to divide a fixed pie (e.g., “claiming value”), expert negotiators find ways to increase the size of the pie (“creating value”). This can only be accomplished by understanding the parties’ interests and values and seeking ways to maximize outcomes for one side where there will be lesser or

no costs incurred in that respect by the other side, or, ideally, where BOTH parties can gain at the same time by a newly-discovered option or approach.

Negotiation reduces costs as much as any other form of ADR. The parties’ negotiations may continue as long as the parties determine that it has potential value. In fact, negotiation can be (and often is) used simultaneously with arbitration or litigation. Negotiation may be integrated into other forms of dispute resolution.

For example, parties could seek to “resolve” a dispute simply by clarifying issues for subsequent adjudication. Or they could agree to limit up-side potential and down-side exposure by negotiating “high-low” outcomes or tailored outcomes which would then be submitted as guidance to an arbitration panel for an independent resolution on grounds that better fit the joint needs of the parties. The creativity that can be used is nearly limitless.

Education For 2010

So what’s in store for next year? ...we’ll tell you when we know?! No seriously, looking forward to the education program for 2010 we are already working on another interesting and varied program. If you have any ideas or requests for topics that you want to see covered, please contact Kathy or me or any member of the education committee. We will do our best to support it.

Educational sessions will be provided at all of our quarterly membership meetings and we look forward to seeing you there. The dates to remember for 2010 are 4th March (after commutation day on 3rd March), 13th May and 15th July, see you all in 2010...

If you have any ideas or requests for topics that you want to see covered, please contact Kathy or me or any member of the education committee. We will do our best to support it.

COMPETITION

Just send in the most correct answers to the following questions and a suggestion for an education topic going forward and you could win a \$100 voucher to spend on hospitality at the 2010 AIRROC/Cavell Commutation and Networking Event.

The following individuals spoke at AIRROC education sessions throughout 2009:

Karen Amos, Resolute Management Services
 R. Steven Anderson, Barger & Wolen LLP
 Bill Barbagallo, Navigant Consulting, Inc.
 Barry Biller, Transamerica Life Insurance Co.
 Karen Boisvert, Swiss Re
 Paul Bugden, Clyde & Co.
 John Byrne, AXA LM
 Elaine Collier, Omega General Insurance Co.
 Rob Collison, Watson Wyatt
 Phil Cook, Omega Insurance Holdings Inc.
 Timothy Corley, Paragon
 Ann Duffy, ISIS Consulting, Inc.
 Leslie Fenton, KPMG
 Michelle George, Chadbourne & Parke LLP
 Lawrence Greengrass, Mound Cotton
 Wollan & Greengrass
 Eric Haab, Lovells LLP
 Debra Hall, Global Regulatory & Risk Consultants
 Phil Herson, Kinsale
 John Hibbert, Pro Insurance Solutions Ltd.
 Frank Hudson, Guy Carpenter
 Frank Kehrwald, Swiss Re
 Terry Kelaher, Allstate Insurance Co.
 Larry Lorenzen, Westport Insurance Corp., Swiss Re
 Andrew Maneval, Chesham Consulting
 Nigel Montgomery, Sidley Austin LLP
 Jim Moran, RFML

Don Mros, Chadbourne & Parke LLP
 Clive O'Connell, Barlow Lyde & Gilbert LLP
 Frank Palmay, Lang & Michener LLP
 Mike Palmer, Cavell
 John Parker, TIG
 David Pearson, Helix UK
 Nick Pearson, Edwards Angell Palmer & Dodge LLP
 William Popalisky, DLA Piper
 Ali Rifai, Centre Re Solutions
 Jonathan Rosen, The Home in Liquidation
 Jason Russ, Milliman
 Richard Rutty, Resolute Management Services
 Thomas Ryan, Milliman
 Steve Ryland, PRO Insurance Solutions Ltd.
 Peter Scarpato, Conflict Resolved, LLC
 Steven Schwartz, Locke Lord Bissell & Liddell LLP
 Teresa Snider, Butler Rubin Saltarelli & Boyd LLP
 Francine Semaya, Nelson Levine de Luca & Horst LLC
 Pieter Van Tol, Lovells LLP
 James Veach, Mound Cotton Wollan & Greengrass
 Andrea Viera, BMS
 John Wardrop, KPMG
 John West, Helix
 Matt Wulf, Reinsurance Association of America
 Michael Zeller, AIG

Now try to answer our competition on the following page.

continued in box next page ►

Conclusion

Your Education Committee looks forward to the coming year. Armed with your suggestions, we intend to provide lively and challenging sessions at every AIRROC gathering. n



Questionnaire Continued from Box on Previous Page

Can you classify what the 51 presenters from 2009 do as their primary means of employment? (Please enter the corresponding number in the boxes provided.)

Industry Practitioner	<input type="checkbox"/>	Lawyer*	<input type="checkbox"/>
Legislator	<input type="checkbox"/>	Actuary	<input type="checkbox"/>
Broker	<input type="checkbox"/>	Consultant	<input type="checkbox"/>
Arbitrator	<input type="checkbox"/>	Other	<input type="checkbox"/>
Mediator	<input type="checkbox"/>		

* use this category for lawyers employed by law firms, classify in-house as "Industry practitioner."

In what countries do these 51 presenters reside?

Canada	<input type="checkbox"/>
USA	<input type="checkbox"/>
UK	<input type="checkbox"/>
Other	<input type="checkbox"/>

For non-competition credit, please provide any feedback from the 2009 education sessions which you believe could assist with the Education Committee going forward.

For a possible tie-breaker, please enter your suggestion for at least one future AIRROC education session topic.

Note: Only 2009 and/or 2010 AIRROC members are eligible. If you are unable to join AIRROC, for example, because you are a service provider, we still invite you to use the form to send us any education session topics or feedback you want to suggest.

All valid entries must contain a suggestion for future AIRROC education session topics, as the better suggestion will serve as a tie-breaker in case of a tie. All entries must be received by February 1, 2010.

E-mail completed entries to Kathy Barker at kathy_barker@prois-inc.com or Karen Amos at karen.amos@resmsl.co.uk. Or, fill it out on the AIRROC website, www.airroc.org.

Women Who Launch **Continued from Page 11**

A mentor offers expertise, shares their experiences and lessons learned, and tests and challenges the mentee's growth.

They offered their perspective on how serving as a mentor will enrich the mentor on both a personal and professional level, and enable the mentor to give back to the reinsurance community. Mentoring has the added benefit of providing the mentor with insight into younger workers. A mentor offers expertise, shares their experiences and lessons learned, and tests and challenges the mentee's growth. In order for the mentoring to be most useful, the mentee needs to be prepared to hear negative feedback as well as positive feedback.

The vision of AIRROC Mentoring Program is to offer guidance, counsel, and constructive resources to help insurance industry women fulfill their potential. The goal of the Program is to provide women with access to insurance executives with experience in a wide range of subjects who will share their knowledge and advice. If you can offer assistance in one or more

of the following areas: legal, accounting, operations, actuarial, management, leadership training, or strategies for achieving life/work balances (such as managing work travel, family, and personal time), consider filling out a mentor application. Mentor applications are available on AIRROC's website (www.airroc.org). Both men and women are encouraged to apply to serve as mentors. After receiving approximately ten to fifteen applications, information about the AIRROC Mentors will be posted to the website.

The vision of AIRROC Mentoring Program is to offer guidance, counsel, and constructive resources to help insurance industry women fulfill their potential.

Please tell women you know in the insurance and reinsurance industry about this program. They are encouraged to review the list of mentors that will be posted on the AIRROC website and to contact prospective mentors directly to set up a mentoring relationship. n

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Dispute Management Continued from Page 13

other similar procedures are good, the DRP is particularly designed for AIRROC's organization, which provides a platform to bring like-minded parties together to negotiate issues and commute exposures in the spirit of collegiality. Since many of the DRP's cost-savings elements are based on the parties' consent, its success might be hindered because one party with a typical arbitration clause cannot be forced to use it.

...the DRP is particularly designed for AIRROC's organization, which provides a platform to bring like-minded parties together to negotiate issues and commute exposures in the spirit of collegiality.

This comment generated debate over whether companies would consent to using the DRP. The panel first noted that reinsurers might prefer it if they desire to save the formidable cost of arbitration to resolve small disputes preventing needed closure of their business or if they have retrocessionaires who will refuse to pay a claim unless supported by a panel order. As to the issue whether retrocessionaires could challenge an award derived from the parties' use of the DRP, essentially a unilateral modification to the standard arbitration clause, the panel felt that the retrocessionaires may be bound since the claim falls within the terms of the contract (even negotiated settlements arguably fall within contract terms). Of course, if cedants or reinsurers feel that they need discovery, they would not be inclined to consent. A broader concern raised by the audience is that, especially as respects smaller US arbitrations, arbitrators often do not exercise sufficient control over discovery – all the more reason for parties to try to consent to procedures like the DRP in advance.

Additional audience questions concerned whether AIRROC arbitrators have sufficient experience to appreciate and understand both the general industry customs and practices and specific technical details of the disputes. In response, the panel noted that AIRROC arbitrators must have at least 10 years of employment in the insurance and reinsurance industry, parties can have their arbiter selected from an ARIAS-certified-only list and, as in mediation where parties place the resolution of multi-million dollar disputes in the hands of one mediator, parties can voluntarily choose one arbiter whom they trust. Also, it was noted that 33 people have already been approved as arbitrators for the DRP, including many individuals who are ARIAS-certified and all of them having excellent background and experience.

The final discussion concerned the parties' ability to craft the DRP into future reinsurance contracts or master dispute management agreements covering a legacy portfolio of transactions. The panel felt that companies in the AIRROC community could draft the DRP into their contractual arrangements, but that defining the size and type of dispute to which it would apply could be difficult (e.g., claims greater than \$1M). As use of the DRP is likely to expand over time, AIRROC will consider enhancements to it in the future, such as tailoring the DRP specifically for pre-dispute use by contracting parties. n

As use of the DRP is likely to expand over time, AIRROC will consider enhancements to it in the future, such as tailoring the DRP specifically for pre-dispute use by contracting parties.

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Commuting Reinsurance Agreements **Continued from Page 15**

Global Reinsurance Corp. of America v. Argonaut Ins. Co., 634 F. Supp. 2d 342 (S.D.N.Y. 2009) (confirming arbitration award providing that the cedent could recover from reinsurer for commuted claims); *Global Reinsurance Corp. v. Argonaut Ins. Co.*, Nos. 07-8196 and 07-8350, 2008 WL 1805459 (S.D.N.Y. April 24, 2008) (unsealing two Panel awards, which found that retrocessionaire was not required to pay commutation amount, but rather to pay claims subject to the commutation as those claims would have been due over time).

From a cross-Atlantic perspective, Richard Rutty (Commutation Manager for Resolute Management Services, Ltd.) focused on policyholders and how obligations owed these policyholders might affect the sale and purchase of run-off business considerations, as illustrated by the recent *Scottish Lion* decision. See *Scottish Lion Ins. Co. Ltd.*, ScotCS P1981/08 (Lord Glennie). In Mr. Rutty's opinion, the recent arrival of much outside capital and the resulting competition for run-off business raises many regulatory issues.

From a cross-Atlantic perspective, Richard Rutty... focused on policyholders and how obligations owed these policyholders might affect the sale and purchase of run-off business considerations...

For Mr. Rutty, the overriding regulatory concern remains whether obligations to policyholders are

moving to a better (or worse) capitalized company. Mr. Rutty believes that within the next five to ten years a run-off acquisition may go spectacularly wrong, with policyholders winding up with a less secure company (and regulators winding up red-faced).

For Mr. Rutty, the overriding regulatory concern remains whether obligations to policyholders are moving to a better (or worse) capitalized company.

Your reporter sought to play off Mr. Rutty's concerns with an overview of U.S. regulatory obstacles facing the sellers and buyers of run-off business. My presentation set out due diligence items of particular importance to the buyer of a run-off book or entity, e.g., run-off management agreements, trust and security documents, actuarial appraisals filed in conjunction with annual statements or triennial examinations, and inwards and outwards pooling arrangements.

I discussed the use of term sheets to lock in non-binding understandings with a target company's cedants and how these term sheets could be turned into commutations post-closing and after regulatory approval. I concluded with a review of the NAIC Form A and a passing reference to the possibility that a sale of AIRROC, Inc. might, under some circumstances, require holding company approval as well. [n](#)

Offset Issues **Continued from Page 12**

depending on whether they are acting as a reinsurer as or a direct writer, while Mr. Moran stressed the importance of face-to-face meetings, observing that "confrontation" gets things done.

... setoff radically changes under insolvency rules in England...

The panel also discussed offset in the insolvency context. Paul Bugden explained that setoff radically changes under insolvency rules in England, with general setoff of mutual claims being permitted between a debtor and creditor including contingent claims. In the U.S., the general rule is that mutual debts and credits may be set off against each other, but there are exceptions. Paul Bugden noted there are also exceptions in the U.K., such

as where a creditor purchases a debt with knowledge of an imminent insolvency. According to Don Mros, some receivers see offset as a preference – but it is a legal preference permitted by the legislature. Moderator Greengrass discussed the potential impact of arbitration on the outcome of an offset dispute. He described a case where an insolvent company owed millions of dollars in commissions to an MGA, which was owned by a reinsurer. The reinsurer in turn owed millions of dollars to the insolvent company. The arbitrators ignored Montana law requiring mutuality of identity and permitted netting of the balances.

The panel concluded the session by discussing offset issues in the context of commutations, and acquisitions. [n](#)



How Do Run-Off Companies Address Key Aspects ... Continued from Page 19

Measuring Performance: Common among all was the use of metrics, be it number of coverage and policy buy-backs, claims settlements, collections, operating expenses, reinsurance recoverables, expense budget, ability to return shareholder value, company and department goals achieved, monthly reports, claims targets and impact on balance sheet.

Controlling Expenses: Various methods were discussed, such as the traditional budgeting process to alleviate a minor item from becoming a big cost later, and business plans to help plan and determine expenses. The aim is to have no surprises.

IT Platform: IT is the single largest expense behind compensation costs, and it deserves the investment in time and expense it requires. The panelists discussed options that have worked for them such as subcontracting IT work with vendors, using two legacy systems instead of integrating them to generate better management reporting, using one claims platform to eliminate duplicate systems, installing new systems that will work 30 years from hence, and imaging claims documents.

Claims Management and Commutations: Depending on which side they represented, direct or reinsurance, panelists favored varying techniques for claims management such as policy buy-backs to achieve finality; closely monitoring the business where it is difficult to establish targets due to inherent uncertainty; measuring claims to reduce reserves; establishing a litigation plan and budgeting for it; and taking measured steps from the top down to convert reinsurance asset to cash. Panelists favored commutation as reinsurer and opposed it as cedant.

...panelists favored varying techniques for claims management such as policy buy-backs to achieve finality...

Ms. Semaya reported on issues facing liquidation bureaus. Regulators also have to maintain competent staff and need to develop and maintain effective systems. IT is a big challenge in a dynamic environment, rendering systems obsolete very rapidly and incurring a big cost to maintain. The challenge for liquidators is to keep abreast of different moving parts. When a new run-off occurs, its overall integration and mitigating volatility are a challenge. She recommends keeping honest, open communications with the regulator.

One audience member questioned the panel about the impact of a Federal Insurance Office on run-off. Mr. Kelaher stated that Allstate advocates a Federal charter. Reaching finality with one Federal organization is much easier than in the current system. [n](#)

Keynote Address by Regis J. Coccia Continued from Page 8

go, what is the next Asbestos? Chinese drywall is huge; but since it affects homeowners (rather than commercial enterprises), it may not be a big attraction to litigants.

... to optimize capital may be in running off business...

Mr. Coccia reiterated that the insurance industry is experiencing difficult times. With claims volume increasing, there is a greater need for certainty; and desire for capital is high. Thus, he concluded, the best decision to optimize capital may be in running off business – a fitting compliment to the run-off market. [n](#)

Message from CEO and Executive Director Continued from Page 1

all of the original Board members continuing to serve. The semi-annual commutation and networking gatherings have become AIRROC's signature events, drawing on the ever growing crowd of run-off managers, service providers, attorneys, and others working with discontinued books of business to negotiate commutations, resolve issues and partake in the tremendous networking opportunities.

The growth in AIRROC's membership demonstrates the value that the organization brings in its ability to influence the run-off industry as it grows and evolves. Happy anniversary and congratulations to Trish Getty, Jonathan Rosen, the AIRROC Board of Directors, Officers and Counsel Jeff Mace of Dewey & LeBoeuf but, most of all, the members! What an exciting milestone! [n](#)



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In 1933 three attorneys opened a law office at 64 Williams Street in downtown Manhattan to serve the insurance and reinsurance community. Today almost 90 partners and associates continue to serve this community from offices in New York, New Jersey, Florida and California.

Our practice groups concentrate on:

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- insolvency
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- commercial property coverage
- third-party liability and defense
- errors and omissions practice
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Our expertise includes formulating and implementing policy buyback and commutation strategies for distressed insurers and companies with run-off blocks. The cornerstone of our practice is successfully arbitrating, mediating, and litigating disputes that we are unable to resolve on an amicable basis.

Our practice consistently achieves high rankings. In 2009, *Chambers USA* ranked David Raim, co-chair of our reinsurance group, as one of the top six reinsurance attorneys in the United States. Our U.S. and London based reinsurance groups were also awarded high rankings by both *Chambers USA* and *Chambers UK*.

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looking back

2009 AIRROC Accomplishments

Membership Increases to 63

PTO approved trademarks: "AIRROC", AIRROC Logo, "We Seek Solutions", "Solutions Matter"

AIRROC Dispute Resolution Procedure Adopted by Board of Directors

Membership Meeting Education Sessions

AIRROC Regional Education Begins in Chicago

Women's Networking Group – Mentors for Industry Females

Actuarial Committee Objectives Established

looking ahead

2010 AIRROC Objectives

AIRROC Dispute Resolution Procedure Implementation

Run-Off Market Issues Addressed during Membership Meetings

Member Recruitment – Working Together

"AIRROC Matters" Continues to Publish Cutting Edge Articles for the Industry

Education – Cutting Edge Issues Addressed during Membership Meetings

AIRROC Regional Education Continues

Present Winter and Fall 2010 Commutation Forums

Other Suggested Objectives, Added Value to AIRROC Members?



Association of Insurance and Reinsurance Run-off Companies

For More Information about AIRROC, visit www.airroc.org