

# AIRROC<sup>®</sup> MATTERS

Special Issue: AIRROC<sup>®</sup>/R&Q Commutation Event

# Rendez-Vous 2011



A NEWSLETTER ABOUT RUN-OFF COMPANIES AND THEIR ISSUES

www.airroc.org

Message from Executive Membership Director

## “Another Home Run!!”



Trish Getty

The AIRROC/R&Q Commutation & Networking Event is the annual favorite meeting of our members and others. How great to see and reacquaint with one another again to further our business objectives. I have observed meetings beginning as early as Monday morning continuing through Wednesday.

A tremendous thank you goes to Kathy Barker (Excalibur Re/Armour Risk) and Jonathan Bank (Locke Lord) for their keen sense of topic selection and development of the program. It is always a challenge to remain “on top of the game” on education sessions, but we knocked the ball out of the park once again.

Burned in my memory are the glasses tinkling and conversation flowing during the gala dinner, the lovely ladies in their evening wear and gentlemen sporting great ties.

We congratulate both Andrew Rothseid (RunOff Re.Solve) and Gary Lee (Morrison Foerster) who shared the AIRROC Run-off Person of the Year for 2011. We were fortunate to have past award recipients attend our dinner: Paul Dassenko, Oliver Horbelt, Barbara Murray and Mindy Kipness.

*continued on page 30*

## U.S. Solvent Scheme Designers Share AIRROC Run-off Award



Andrew Rothseid (RunOff Re.Solve) and Gary Lee (Morrison Foerster)

By Nigel Montgomery, Sidley Austin

At the gala dinner on October 17, 2011, Sidley Austin LLP was proud to present the AIRROC Run-off Person of the Year Award to Andrew Rothseid of RunOff Re.Solve LLC and Gary Lee of Morrison Foerster LLP. Both gentlemen received the coveted designation for their diligent work on the first-ever Rhode Island Commutation Plan for GTE REinsurance Company Limited. This was particularly appropriate given Sidley Austin’s practice in Schemes of Arrangement in the UK, and the fact that Nigel Montgomery, who represented Sidley in the Award presentation, had worked with those advising the Rhode Island Insurance Department in the creation of the Commutation Plan legislation.

Mr. Rothseid congratulated and thanked his co-recipient, Mr. Lee, and Mr. Lee’s client Deputy Director and Superintendent of Insurance

*continued on page 5*



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*Message from Publications Committee Co-Chair***AIRROC Matters in Transition**

Leah A. Spivey

This has been a year of change for AIRROC with our new Chairman of the Board of Directors, Art Coleman, and his Vice Chairs, Kathy Barker and Marianne Petillo, who have helped lead AIRROC from the beginning and are now embracing new ways of conducting the business of AIRROC and moving us into the future. The hiring of CINN to assist with administrative functions and allow Trish Getty the ability to focus all of her efforts on membership retention and development is just one example of the changes being made to improve the organization for all of our members. Over the past year, AIRROC Matters also found a new approach through technology by sending an e-blast to convey recent news and announce the coming of a Special Edition. And, most recently at our annual Commutation Event, everyone in attendance experienced different types of Educational Sessions with the use of immediate response feedback technology.

*As newly elected members of the Board and as Publications Committee Chairs, we are proud to be associated with the great product and service that AIRROC Matters provides.*

We are only able to enjoy these positive changes due to the consistency of dedicated leadership, committed membership and a strong sense of volunteerism, which positions us well for continued growth and upgrading and updating of AIRROC and its services. As newly elected members of the Board and as Publications Committee Chairs, we are proud to be associated with the great product and service that AIRROC Matters provides. In review, the Publications Committee, led by its Editor-in-Chief Peter Scarpato, delivered four wonderful editions, yet again, in 2011. The polished Rendez-vous Edition was produced by Editor Jim Veach at the helm last January, followed by a strong Spring Edition encompassing all of the sections we have come to know and rely upon. Next was a high point of the very well received Special Edition on Insolvencies by prolific Special Editors, Mark Megaw and Connie O'Mara, which was professionally succeeded by the Fall Edition, with the roundtable interview on Managing Legacy Business feature. We would like to sincerely thank all of our contributors, editors, and volunteer Publications Committee members, who made 2011 another great year for AIRROC Matters.

Looking forward to next year and beyond, the committee will be entertaining new design and delivery options, which should produce some interesting results. Summarized below, the responses to our AIRROC Matters Survey during our annual Commutation Event revealed true appreciation for AIRROC Matters and some desire to have it delivered via various mediums.

*continued on page 29*

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# Rendez-Vous 2011

## AIRROC® Matters

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|---|--|
| <p><b>1</b> Message from Executive Membership Director<br/><b>"Another Home Run!!"</b><br/>By Trish Getty</p> <p><b>1</b> <b>U.S. Solvent Scheme Designers Share AIRROC Run-off Award</b><br/>By Nigel Montgomery</p> <p><b>3</b> Message from Publications Committee Co-Chair<br/><b>AIRROC Matters in Transition</b><br/>By Leah A. Spivey</p> <p><b>6</b> <b>AIRROC / R&amp;Q Commutation Event in pictures</b></p> <p><b>8</b> <b>Welcome and Opening Remarks</b></p> <p><b>8</b> Education Session Summary<br/><b>Part VII Transfer – The Practical Guide</b><br/>By Peter A. Scarpato</p> <p><b>11</b> Education Session Summary<br/><b>Run-offs – The Sane Alternative to Traditional Receiverships?</b><br/>(The Changing Face of Run-off Legislation)<br/>By Connie O'Mara</p> <p><b>14</b> Luncheon Keynote Speaker<br/><b>New NYLB Special Deputy Bing Reviews Progress and Looks Ahead</b><br/>By James Veach</p> | <p><b>16</b> <b>Rendez-vous 2011 Gala Dinner in pictures</b></p> <p><b>20</b> <b>Women's Networking Luncheon– AIRROC Welcomes Keynote Speaker Karen Weldin-Stewart</b><br/>By Jeanne Kohler</p> <p><b>23</b> Education Session Summary<br/><b>Industry Leader Forum – Senior Executives on the Challenges of Managing the Assets and Liabilities of Discontinued Operations</b><br/>By Catherine E. Isely</p> <p><b>25</b> <b>The Great Debate – Your Vote Counts</b><br/>By Bina T. Dagar</p> <p><b>26</b> <b>Voting on AIRROC's Agenda in Real Time</b></p> <p><b>26</b> <b>Closing Remarks/Wrap Up</b></p> <p><b>27</b> <b>AIRROC/R&amp;Q Golf Day – "Could not have had a better day for golf"</b><br/>By Ed Gibney</p> <p><b>29</b> <b>AIRROC Publications Committee Picture</b></p> <p><b>30</b> <b>Sponsors</b></p> |
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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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## AIRROC Run-off Award Continued from Page 1

AIRROC Run-Off Person of the Year Awardees—past and present: (Clockwise from left): 2011 Andrew Rothseid (Runoff Re.Solve), 2006 Oliver Horbelt (Munich Re), 2005 Paul Dassenko (Risk Transfer Underwriting), 2011 Gary Lee (Morrison Foerster), 2009 Barbara Murray (Lumbermens Mutual), 2010 Mindy Kipness (Chartis)



Kathy Barker (Excalibur Re/Armour Risk), Andrew Rothseid (RunOff Re.Solve), Gary Lee (Morrison Foerster), Trish Getty (AIRROC), Nigel Montgomery (Sidley Austin); Nigel Montgomery (Sidley Austin) at the podium

Joe Torti III and the staff of the Rhode Island Insurance Department, for their support and work on the plan. He also acknowledged that novel solutions such as this cannot be accomplished without the help of many contributors, including Mr. Rothseid's client and GTE RE's ultimate parent, Verizon Communications, Marsh Bermuda, GTE RE's run off manager, actuarial consultants and outside counsel.

*...Sidley Austin LLP was proud to present the AIRROC Run-off Persons of the Year Award to Andrew Rothseid of RunOff Re.Solve LLC and Gary Lee of Morrison Foerster LLP.*

Mr. Rothseid serves as the Commutation Plan Advisor for GTE RE, the first solvent US property and casualty insurer or reinsurer to implement an accelerated closure plan under the Rhode Island statute entitled "Voluntary Restructuring of Solvent Insurers." He designed, drafted and implemented the GTE RE Commutation Plan and negotiated the terms with the Rhode Island Insurance Department and GTE RE's cedents.

Mr. Lee is co-chair of Morrison Foerster's Bankruptcy & Restructuring Practice Group. He advises clients on domestic and international restructuring and insolvency matters in the U.S., UK, and continental Europe. Mr. Lee has been heavily involved in the implementation of foreign liquida-

tions and schemes of arrangement in the U.S. and has been closely involved with issues arising under Chapter 15 of the U.S. Bankruptcy Code.

The Rhode Island statute contains a procedure by which commercial insurers and reinsurers in run-off, or no longer writing new business, may honor creditors' claims, liquidate future exposure to those claims, and terminate operations. Although enacted in 2002, and effective in 2004, the statute had never been applied prior to the GTE Plan. The Department of Business Regulation had responsibility for reviewing and commenting on the proposed Commutation Plan so that it could be presented to the Superior Court.

In April, 2011 the Providence County Superior Court decided that the Rhode Island Statute permitting Commutation Plans was constitutional under both the United States and Rhode Island Constitutions and gave the Plan the go-ahead. As noted at the time by Superintendent Torti: "the Court recognized that the exhaustive review and analysis of the Plan by the DBR provides important safeguards to protect the interests of all policyholders. We are pleased that the Court sustained the constitutionality of this innovative law and are committed to exercising a meaningful role in overseeing this and future commutations."

For an excellent overview of the GTE RE commutation

*continued on page 29* ▶

## AIRROC / R&Q Commutation Event October 2011



*Pictured: 1. Jonathan Bank (Locke Lord). 2. Art Coleman (Citadel Re), Andrew McCarthy (R&Q). 3. Mike Zeller (AIG), Jonathan Rosen, Carole Acunto (CINN). 4. Gala Dinner. 5. Mindy Kipness (Chartis), Janet Mercer Rose (Munich Re), Marianne Petillo (ROM Re). 6. Elaine Tam (ROM Re). 7. (From left) Frank Pecht (Citadel Risk), Bruce Shulan (Trenwick America), Rudy Dimmling (Trenwick America), Frank Kehrwald (Swiss Re), Art Coleman (Citadel Re). 8. Peter Doyle (Munich Re), Tim Stalker (Stalker Vogrin), Andrew Rothseid (RunOff Re.Solve) 9. Host Mike Walker (KPMG), Tuesday Reception. 10. Bina Dagar (Ameya Consulting), Susan Aldridge (Chadbourne & Parke). 11. Bruce Shulan (Trenwick America), Dick White (Integrity). 12. (Standing from left, clockwise) Wendy Gridley (R&Q) Julie Ponsford (R&Q), Bryina Starks, Alessia Sciuлло (CINN).*



*Pictured:* **1.** Attendees at Tuesday Reception. **2.** Trish Getty (AIRROC) and Carole Acunto (CINN). **3.** Kathy Barker (Excalibur Re/Armour Risk). **4.** Bill Barbagallo (Barbagallo & Stuehrk), Diane Ferro (Excalibur Re), Sally Cassidy (FM Global). **5.** Ken Wylie (Sidley Austin), John Wardrop (KPMG). **6.** Nicole Butkiewicz & Carol Sullo (The Travelers). **7.** Negotiations. **8.** Bill Littel (Allstate). **9.** Groupies gather! **10.** Alan Augustin (PWC). **11.** Mike Walker (KPMG). **12.** Richard Emmett (PRO). **13.** Ed Stanley. **14.** Graham Jackson.





## Welcome and Opening Remarks

### Conference Chairs

**Jonathan Bank**, Locke Lord LLP

**Kathy Barker**, Excalibur Re / Armour Risk Mgmt

### Education Session Summary

## Part VII Transfer – The Practical Guide



*Summary by Peter A. Scarpato, Conflict Resolved, LLC*

The opening educational session at this year's Commutation Event was "Practicalities of Part VII Transfers," presented by a distinguished panel of Steven Goodlud, Nigel Montgomery, Tom Taylor, Stuart Shepley, Kenneth Wylie and Jim Moran.

After noting the usual skepticism over the word "Scheme" and defining a Part VII transfer as the process governing the transfer of insurance business from one company to another, Steve Goodlud asked the audience to express via electronic vote their views of the Part VII process. The results included a surprising 48% "generally supportive" and 24% "skeptical of the motives" of the process.

*According to Nigel Montgomery and Stuart Shepley, the advent of Solvency II fueled the recent spike in the number of court applications for Part VII transfer approvals.*

According to Nigel Montgomery and Stuart Shepley, the advent of Solvency II fueled the recent spike in the number of court applications for Part VII transfer approvals. The regulations forced large European insurance groups to identify and consolidate pockets of trapped capital in inefficiently managed run-off business, thinly spread across their various sectors and subsidiaries. As an example, Tom Taylor noted his company's March 2011 completion of a large scheme involving the consolidation of three books of business and four companies, including one formed in 1790. According to Steve Goodlud, there have been 100 Part VII transfers of non-life business from well-known companies (ACE, AIG, Allianz, Berkshire Hathaway,

*continued on next page* ►



Left to right: Jim Moran (R&Q), Nigel Montgomery and Ken Wylie (Sidley Austin)

CNA, Hannover, R&Q, Swiss Re, Travelers, Zurich) – 50% involving run-off – since they were introduced in 2001. Notably, there were no regulatory failures of any of the involved entities post-transfer.

Discussion shifted to the responsibilities and roles of the independent expert (“IE”) in the Part VII procedure. Stuart Shepley explained that the IE must be “robustly independent with a good CV in the business.” The IE must be familiar with the relevant business mix; not “an actuary’s actuary,” but someone who can assess the business model and claims settlement philosophies of both the transferor and transferee. The IE must ensure that their report analyzes whether all impacted policyholders will be properly notified, and the commercial impact of the transferee’s plans on three groups of policyholders: (1) those left behind in the transferor (2) those moving to the transferee and (3) those already in the transferee. As Stuart Shepley described, the IE report is “the most important way to communicate to everyone what the Part VII transfer will do.”

The IE must carefully exercise its substantial discretion. For example, it need only share “relevant” data with the FSA, but can have private meetings with regulators to address questions not discussed with the companies. It

can rely on data and materials provided by the companies but is obliged to “check the data” for accuracy. It is, by definition, “independent,” but can be paid by only one of the companies. Picking up on this point, Kenneth Wylie noted the differences between the roles of the neutral Part VII IE and partisan US expert witness. Nigel Montgomery characterized the IE as “someone without a client,” who must be fair, transparent and subject to challenge if necessary. According to Stuart Shepley, since the IE is an officer of the court, any objections are taken very seriously by the presiding judge.

*Jim Moran noted that the presiding judge must see that companies have made every possible effort to effectuate notice, especially for transfers involving US policyholders where state-by-state notice regulations may differ.*

The panel next addressed the requisite scope of notification to policyholders and reinsurers. Steve Goodlud re-emphasized the critical importance of this requirement, noting that all three categories of policyholders and every reinsurer must be notified *in writing, individually*. Other than in a very few, unique situations (i.e., waived for the millions of policyholders in the Equitas books of business),

*continued on page 29* ►

Left to right: Tom Taylor (AXA Liabilities Mgrs.), Steve Goodlud (KPMG), Jim Moran (R&Q), Ken Wylie (KPMG), Stuart Shepley (KPMG) Nigel Montgomery (Sidley Austin)





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## Education Session Summary

# Run-offs – The Sane Alternative to Traditional Receiverships?

## (The Changing Face of Run-off Legislation)

Summary by Connie O'Mara, O'Mara Consulting

The theme of this highly distinguished panel of insurance regulators, elicited by questions from Norris Clark, was that the regulatory world has evolved due to changing attitudes, tools, and expertise and the regulatory climate is more favorable for run-off as opposed to more traditional receiverships and liquidations.

What are the regulatory considerations in allowing a voluntary run-off? Mr. Johnson voiced what appeared to be a consensus among panel members that tools created since 1989 by the NAIC for solvency monitoring have spawned a new mindset among regulators. Now that they have the tools to detect problems earlier and to monitor a company's financial condition, they are more likely to allow run-off. They now have more sophisticated stress-testing capabilities that provide for more effective solvency monitoring. They understand that run-off businesses need to be managed differently from ongoing concerns and they want to see managers that develop and manage a business plan specifically focused on run-off. They put regulatory resources to work to oversee the implementation of run-off plans and to monitor

the effectiveness of a company's ability to achieve those run-off business plan objectives. This process is further advanced by a previously unseen level of regulatory cooperation facilitated through the NAIC.

*Mr. Clark's question about a state statutory basis for allowing run-off drew a response from the panel that surprised many audience members. The panel did not appear to favor some type of "Model Act" as a regulatory basis for run-offs.*

Mr. Clark's question about a state statutory basis for allowing run-off drew a response from the panel that surprised many audience members. The panel did not appear to favor some type of "Model Act" as a regulatory basis for run-offs. Their opinion was that such an act might "box-in" regulators just when flexibility was needed to deal with each situation.

Absent a state regulatory mandate, how did members of the panel deal with the risk that guarantee funds could assert they had made a "lousy decision" if the

*continued on page 12* ▶

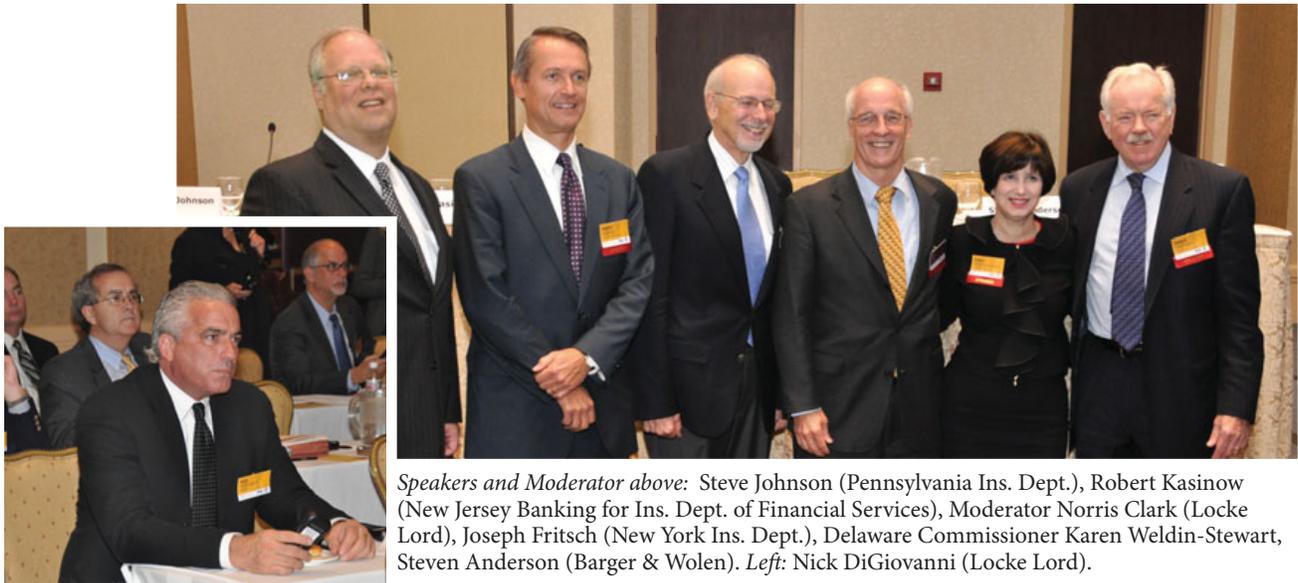


*Left to right:* Moderator Norris Clark (Locke Lord), Delaware Commissioner Karen Weldin-Stewart, Steve Johnson (Pennsylvania Ins. Dept.)

*Left to right:* Robert Kasinow, (New Jersey Banking for Ins. Dept. of Financial Services), Joseph Fritsch (New York Dept. of Ins.), Steven Anderson (Barger & Wolen)



Run-offs – The Sane Alternative to Traditional Receiverships? Continued from Page 11



Speakers and Moderator above: Steve Johnson (Pennsylvania Ins. Dept.), Robert Kasinow (New Jersey Banking for Ins. Dept. of Financial Services), Moderator Norris Clark (Locke Lord), Joseph Fritsch (New York Ins. Dept.), Delaware Commissioner Karen Weldin-Stewart, Steven Anderson (Barger & Wolen). Left: Nick DiGiovanni (Locke Lord).

run-off ultimately fails and the company needs to be formally liquidated? Panel members discussed the need to communicate effectively with guarantee funds from the outset, to elucidate their logic in allowing the run-off (not to ask for approval, because statutes are clear that it is the state insurance commissioner that has responsibility for the decision or to make the decision to ask a court to make that decision). They need to discuss the “what ifs” and work with guarantee funds to provide needed information as the run-off progresses so they are ready and “teed up” in position to better protect and service policyholders if a liquidation eventually becomes necessary.

Would there be a benefit to having at least some statutory accounting practices that deal specifically with run-off situations? The consensus was that tailored accounting practices should be fact specific and allow regulators to see appropriate options for each company to facilitate a successful run-off.

With regard to the recent GTE Voluntary Restructuring in Rhode Island, the panel was asked whether they felt the mechanism would encourage companies to re-domesticate to Rhode Island to do a “solvent scheme of arrangement.” Members of the panel discussed how it made sense to accelerate the settlement of all claims to save administrative costs. While the process will only work on a company with a well-developed book of business and stable reserves (and no material IBNR), panel members seem to think now that one company has done it, others may utilize this route. Whether other states are likely to enact such legislation depends on the political climate.

In response to Mr. Clark’s question on how they evaluate the management team for a run-off, whether that of an acquiring company or a third party administrator, the panel said they don’t want “toll-takers” (staff paid a set fee to handle the business) but rather prefer management to have “skin in the game” and be vested in reducing expenses, making money on investments, etc. Whether a company is looking to buy a company to reactivate a line of business that was in run-off, or to consolidate run-off portfolios, the regulators want to see the plan for making a profit and be comfortable that the run-off management has the experience to make the plan work.

*Whether a company is looking to buy a company to reactivate a line of business that was in run-off, or to consolidate run-off portfolios, the regulators want to see the plan for making a profit and be comfortable that the run-off management has the experience to make the plan work.*

How do you evaluate the quality of the data in a run-off? The panel agreed that when a buyer is doing diligence, they tell them about the data issues previously discovered by their respective departments. The panel felt expertise in seeing the skeletons in the closet and knowing how to deal with them was all part of the criteria in evaluating a potential management team to run-off a business.

In sum, the panel evinced a willingness to take risks and exercise regulatory “creativity” as long as they could protect policyholders. ■



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*Luncheon Keynote Speaker*

# New NYLB Special Deputy Bing Reviews Progress and Looks Ahead

By James Veach, Mound Cotton Wollan & Greengrass

This year's luncheon speaker, the head of the New York Liquidation Bureau, came to the Bureau from a successful political career. From 2002 until just after the New York State Legislature adjourned this past June and Governor Andrew Cuomo appointed him Special Deputy Superintendent in charge of the Bureau, Jonathan Bing served as the Assemblyperson for Manhattan's 73<sup>rd</sup> Assembly District. The 73<sup>rd</sup> District covers the Upper East Side and East Midtown Manhattan in New York City. (Think Museum Mile, Sutton Place, Grand Central Station, and Turtle Bay.)



James Veach (Mound Cotton Wollan & Greengrass), Jonathan Bing (New York Liquidation Bureau)

## Mr. Bing's Background

Mr. Bing, a graduate of New York University School of Law, resigned from the Assembly in the middle of his fifth term in order to spend more time with his wife, four year-old daughter and new baby who is expected in December 2011. While in the Assembly, Mr. Bing wrote more than 85 pieces of legislation which passed the Assembly, 35 of which also passed the Senate and were signed into law by four New York Governors.

*Insurance-related laws authored or sponsored by our speaker included statutes that lightened the regulatory load for insurers doing business in New York.*

Insurance-related laws authored or sponsored by our speaker included statutes that lightened the regulatory load for insurers doing business in New York. For example, Mr. Bing authored the law that reduced the required number of directors for property/casualty insurers from thirteen to seven. Another law allowed insurers to amend and correct certain policy forms without the Superintendent's approval. Mr. Bing also authored the law that extended statutes of limitation for workers' compensation claims filed by responders exposed to smoke and other hazards during the 9/11 World Trade Center clean-up efforts.

## The Bureau

With respect to his new position, Mr. Bing pointed out that the Bureau is unique in that it "runs off its own power," *i.e.*, without direct taxpayer funding, although with the support of guaranty funds and using the assets of New York State-domiciled insurance entities in receivership and under the Bureau's supervision.

*The Bureau differs from insurance receivers in other states in that the Bureau handles both claims handling and payment functions as well as the receivership functions for the estates under its supervision.*

Mr. Bing pointed out that the Bureau is unique in other respects. For example, the Bureau is not considered a New York State agency. As a result, the New York State Comptroller cannot audit the Bureau. Nor is the Bureau subject to New York State's Freedom of Information Laws.

The Bureau operates pursuant to NYIL Article 74 as the entity that carries out the responsibilities of the Superintendent of Financial Services in his capacity as Receiver, and subject to the oversight of various New York State Supreme Court Justices. As Mr. Bing put it in describing the Bureau's status: "We know what we are not, it's hard to figure out what we are, but at least we know what we are not."

The Bureau differs from insurance receivers in other states in that the Bureau handles both claims handling and payment functions as well as the receivership

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*Clockwise from left:*  
Jonathan Bing and  
attendees.

functions for the estates under its supervision. Also, unlike other states' insurance receivers, New York requires direct court approval for claims that the Bureau allows.

Mr. Bing's Bureau is also quite large. The Bureau employs 260 persons and oversees \$3 billion in receivership assets. In fact, the Bureau employs more persons than many state insurance departments, though its staff has been reduced by half since its peak.

## Accomplishments

Mr. Bing addressed the work underway at the reinsurance unit headed up by Robert Sherwood and reported on some of the Bureau's recent accomplishments.

**Record Keeping.** The Bureau, during the intake of an estate, identifies and secures the required data to continue the day to day operations of the liquidated estate at the Bureau site while inventorying all other documentation to be sent offsite.

**Reinsurance Recovery.** For the better part of the last four years, the reinsurance division has focused on collecting reinsurance on estates other than Midland. In that period of time \$100 million has been collected, with more than 30% of that balance being reinsurance recoveries on estates other than Midland. The previous two years showed reinsurance recoveries of a little over 5% of the total collected relating to estates other than Midland.

**Increased payments.** Crediting his predecessors, Mr. Bing reported that \$110 million had been distributed to claimants and policyholders thus far in 2011. Mr. Bing also noted a reduction in the amount of money held on deposit in other states.

**New Lease and Technology.** Thanks to a new fifteen year lease, the Bureau recently moved from 123 to 110 William Street and to nicer quarters, although at a reduced cost per

square foot. The Bureau took advantage of the move to upgrade its technology, *e.g.*, adding a web-based payroll and increasing network storage capacity. The Bureau also recently reduced its staff by 15% thus saving \$4 million in payroll.

## Goals

Mr. Bing announced that his goals included increasing and expanding "external relationships" with organizations such as AIRROC and the National Organization of Life and Health Guaranty Associations (NOLHGA). "I know from my years as a fundraiser that it's easier to ask for help from people when you have met them before."

*Mr. Bing announced that his goals included increasing and expanding "external relationships" with organizations such as AIRROC and the National Organization of Life and Health Guaranty Associations (NOLHGA).*

Mr. Bing intends to continue commutations with all estates where those commutations will benefit the estates. "Discounted cash in hand is worth more than an open receivable." To that end, the Bureau intends to identify open balances of a particular reinsurer across all estates, using its new Accounts Receivable Module, thereby increasing its effectiveness in settling balances with those reinsurers. Mr. Bing also wants to increase expertise on the Bureau's reinsurance collections panel, particularly with respect to certain parts of Europe, Asia, and Latin America.

Our speaker concluded with his take on the new Department of Financial Services, which he believes will allow New York to remain the financial capital of the world. Mr. Bing arrived just as New York merged the State's Departments of Banking and Insurance to create a new

*continued on page 30* ►

## Rendez-vous 2011 Gala Dinner



**1.** *Standing:* Jerry McArthur (TAWA), Karl Wall (Enstar), Vivien Tyrell (Reynolds Porter Chamberlain), Norm Taplin (Goldwater Taplin). *Seated:* Neil Hart (EHC Consulting), Nasri Barakat (II & RCS), Charles Scibetta (Chaffetz Lindsey). **2.** *Standing:* George Mitchell (Chartis), Scott Krochek (Argo Partners), Suzanne Fetter (Alea). *Seated:* Peter Doyle (Munich Re), Mike Zeller (AIG), Robin Seltzer (Argo Partners). **3.** *Standing:* Michael Baschwitz (Zurich), Ali Rifai (Zurich), John Madden (Chiltington), Don Wustrow (Chiltington), Peter Jones (Buchanan Clarke). *Seated:* Patrick Tiernan (Zurich), Sheila Chapman (Zurich), Ricardo Cantilo (Chiltington). **4.** *Standing:* Olivier d'Abadie-de-lurbe (RiverStone), John Parker (RiverStone/TIG), Joe Scognamiglio (Nem Re). *Seated:* Bina Dagar (Ameya Consulting), Frank DeMaria (RiverStone/TIG), Royston Blackwell (RiverStone). **5.** *Standing:* Barry Biller (Transamerica), Richard Melesky (Travelers), Leah Spivey (Munich Re), Susan Aldridge (Chadbourne & Parke), Gary Ibello (Fireman's Fund). *Seated:* Carol Sullo (Travelers), Nicole Butkiewicz (Travelers), Rahul Mehta (Fireman's Fund).



**6.** *Standing:* Andrew Stuehrk (Barbagallo & Stuehrk), Richard Kissel (Kissel Hirsch & Wilmer), Bernard Masson (SCOR), Joanne Caprice (Resolute Mgmt.), Bill Barbagallo (Barbagallo & Stuehrk). *Seated:* Karen Amos (Resolute Mgmt.), Denis Proust (SCOR), Daniel Fernandez (SCOR). **7.** *Standing:* Scott Riley (Westmont Associates), James Veach (Mound Cotton Wollan & Greengrass), Theresa Zlotnik (R&Q), John West (Helix UK), John Wardrop (KPMG). *Seated:* Art Coleman (Citadel Re), Jonathan Bing (NYLB), Michelle Watson (Inpoint). **8.** *Standing:* Jean-Marie Blandin (AXA Liabilities), Eileen Bretherick (Citadel Risk), Chris Reichow (PRO IS), Frank Pecht (Citadel Risk), Stuart Wrenn (Armour Risk). *Seated:* John Byrne (AXA Liabilities), Steve Ryland (Armour Risk), Mike Palmer (Citadel Risk).

## Rendez-vous 2011 Gala Dinner (continued)



**1.** Standing: Stephen Schwab (DLA Piper), Andrea Viera (BMS Int'l), Mike Walker (KPMG), Alan Quilter (R&Q). Seated: Julie Ponsford (R&Q), Wendy Gridley (R&Q). **2.** Standing: Paul Johnson (Verizon), Sheila Small (Verizon), Kathy Barker (Excalibur Re/Armour Risk), Andrew Rothseid (RunOff Re.Solve), Paul Dassenko (Risk Transfer Underwriting), Mindy Kipness (Chartis). Seated: Oliver Horbelt (Munich Re), Gary Lee (Morrison Foerster), Barbara Murray (Lumbermens Mutual), Trish Getty (AIRROC). **3.** Standing: Nick DeGiovanni (Locke Lord), Kevin Walsh (Locke Lord), Delaware Commissioner Karen Weldin-Stewart, Norris Clark (Locke Lord), Steven Schwartz (Locke Lord). Seated: Bill Littel (Allstate), Jonathan Bank (Locke Lord). **4.** Standing: Robert Kasinow (NJ Banking & Ins. Dept.), John Proscio (ROM Re), Alessia Sciuillo (CINN). Seated: Elaine Tam (ROM Re), Marianne Petillo (ROM Re), Spencer Halladey (Insurance Insider), Carole Acunto (CINN).

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# Women's Networking Luncheon

## AIRROC Welcomes Keynote Speaker Karen Weldin-Stewart

Summary by Jeanne Kohler, Edwards Wildman Palmer LLC

The Women's Networking Luncheon was held on Tuesday of the October 2011 Commutations and Network Event and, as with the lunches of other years, men were also welcome to attend, and did in fact attend the lunch, which was sponsored by Edwards Wildman Palmer LLP. The luncheon drew a crowd of over 80 men and women.

After a delicious lunch, Trish Getty, AIRROC's Founding CEO and Executive Director, and currently AIRROC's Executive Membership Director, welcomed the keynote speaker, Karen Weldin-Stewart, the Insurance Commissioner of the State of Delaware Insurance Department.

A native of Delaware, Commissioner Stewart was elected to a four-year term as Delaware Insurance Commissioner in 2008. By way of background, after a 22-year career as a retail executive and entrepreneur, Commissioner Stewart first came to work for the Delaware Insurance Department as a Deputy Receiver in 1989, and served in this capacity until 1993. Following her departure from the Delaware Insurance Department in 1993, Commissioner Stewart opened the Weldin Group, Inc., an insurance and reinsurance consulting company. In 1997, she then joined Reinsurance Solutions International, a subsidiary of Marsh McLennan, as Vice President on regulatory matters.

In her address, Commissioner Stewart looked back on her first two years in office and on her successes to date as Delaware Insurance Commissioner. She explained how she is trying to build the insurance business in Delaware due to what she considers to be certain positive aspects of the state: its location, its laws, its government, its corporate tax and its captive statute. According to Commissioner Stewart, the fastest growing business in Delaware is insurance. In fact, after only two years, Delaware is the eighteenth largest captive domicile in the world.

Commissioner Stewart commented for the attendees on what it is like to be in an elected position, particularly as a female, and the challenges she faced when she was elected. She noted, however, that despite its challenges, she loves what she does, and always remembers the people and the consumers she has helped.

After Commissioner Stewart's address, the attendees had the opportunity to ask the Commissioner questions regarding her views and what she foresees in the future for the state of Delaware. In looking toward future goals, in addition to having more captives in Delaware, one of the things that Commissioner Stewart mentioned she would like to see in Delaware is a reinsurance exchange. According to Commissioner Stewart, she believes that

*continued on next page*



*Clockwise from left:* Delaware Commissioner Karen Weldin-Stewart; Attendees; Diane Ferro (Excalibur Re/Armour Risk); Ed Gibney (CNA), Trish Getty (AIRROC), Bob Sirois (CNA)



Clockwise from top left: Delaware Commissioner Karen Weldin-Stewart; Trish Getty (AIRROC), Jeanne Kohler (Edwards Wildman Palmer); Attendees

the Delaware government’s flexibility and pro-business attitude would make Delaware a good jurisdiction for such an exchange. The discussion was enlightening for all who attended as to Commissioner Stewart’s challenges and successes in her position, as well as what future goals she has for the state of Delaware. ■



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## Education Session Summary

# Industry Leader Forum

## Senior Executives on the Challenges of Managing the Assets and Liabilities of Discontinued Operations

Summary by Catherine E. Isely, Butler Rubin Saltarelli & Boyd LLP

The afternoon educational sessions opened with the Industry Leader Forum, during which senior executives from five major organizations discussed the challenges of managing the assets and liabilities of discontinued operations. Moderated by Lloyd Gura (Mound Cotton Wollan & Greengrass LLP), the panel of speakers included Pat Fee (President, Hannover Finance Inc.), Norbert Lommer (Global Head of Finance, Global Discontinued Business Division, Allianz Life Insurance Company), Scott Belden (M.D. Risk & Reinsurance, Travelers Insurance Company), Mindy Kipness (SVP, Chartis Global Reinsurance Division) and Steve Agosta (SVP & General Counsel, XL Reinsurance America Inc.).

The panelists began by debating whether a live operation that includes run-off business is best served by separating those runoff liabilities into a different legal entity. Pat Fee identified various advantages that flow from concentrating run-off in a separate entity, including

*The panelists began by debating whether a live operation that includes run-off business is best served by separating those runoff liabilities into a different legal entity.*

encouraging a singular focus by employees, limiting conflicting goals within the organization, and avoiding competition for the attention of the claim manager or the actuary. The approach also permits run-off personnel to conclude “reasonable deals at reasonable speed,” Fee explained, and eases a later sale of the business. Fee acknowledged some potential disadvantages to the approach, such as the potential for capital inefficiency and heightened concerns over employee morale. To overcome the latter disadvantage, Fee stressed the importance of ensuring that employees understand that another job is available for them within the organization once run-off goals are achieved.

Norbert Lommer provided a different perspective, explaining that while the entities for which he is responsible include both run-off liabilities and ongoing business, employees share “one vision, one mission.” Emphasizing the importance of transparency where ongoing operations are involved, Lommer noted that his organization avoids potential governance issues that could arise from this business model by establishing appropriate authority limits within which the run-off group can operate independently.

Moderator Lloyd Gura pressed the speakers as to whether separation into different legal entities truly insulated run-off employees from business pressure by current clients of the ongoing operations. Pat Fee assured Gura that it did in his organization, as the separate fiduciary duties of the entities were respected and understood. Fee explained that the entities “all have corporate reputations that are critical,” and ignoring those corporate responsibilities is “just not part of the game plan.”

The speakers then addressed multiple issues associated with negotiating and concluding commutations of discontinued business. The divergent commutation goals and approaches of run-off and live organizations were considered and the senior executives provided insight into their organizations’ varying metrics for tracking run-off progress.



Left to right: Moderator Lloyd Gura (Mound Cotton Wollan & Greengrass); Mindy Kipness (Chartis); Scott Belden (Travelers Ins. Co’s.), Pat Fee (Hannover Re)

*continued on next page* ►

Industry Leader Forum Continued from Page 23



Clockwise from top left: Steve Agosta (XL Reinsurance), Norbert Lommer (Allianz); Attendee; Pat Fee, Norbert Lommer, Scott Belden

The panel also identified critical commutation risks. Referencing the *Trenwick* decision (*Trenwick Am. Reinsurance Corp. v. W.R. Berkley Corp.*, No. UWYX01CV094019148S, 2011 WL 1565889 (Conn. Super. April 1, 2011)), Steve Agosta emphasized the potential uncertainty arising from commutation wordings, particularly the common practice of relying on the phrase “including but not limited to” rather than listing only those companies and contracts being commuted. Similarly, Mindy Kipness impressed upon the audience that “it’s critical to find out what is in your [organization’s] population as part of the negotiation process,” explaining that “a comprehensive view of what you’re actually commuting” is required to truly understand the exposure. Norbert Lommer added that his organization now has best practices in place to ensure that commutation of ongoing and run-off business is done cohesively.

The speakers also considered the question of how actuaries are, and should be, involved in the commutation process. Pat Fee extolled the benefits of a good actuary – “a good actuary is worth his or her weight in gold” – and encouraged companies to involve the actuary from the beginning of and throughout the commutation process. Fee also suggested that negotiations between the actuaries of commuting parties can be productive: “If you have them actually sit down and talk, if you get the two of them together, they will often come within a range of reason that the business people can then straddle if they want to.” Mindy Kipness reminded the audience that an executive’s best partner in commutation negotiations is the actuary who handles the reinsurance portfolio, and Norbert Lommer agreed, explaining that actuaries often

develop expertise about claims from preparing ultimates and modeling APH claims.

*Mindy Kipness reminded the audience that an executive’s best partner in commutation negotiations is the actuary who handles the reinsurance portfolio, and Norbert Lommer agreed, explaining that actuaries often develop expertise about claims from preparing ultimates and modeling APH claims.*

Audience members were enthusiastic about the opportunity to pose questions to the industry leaders. In response to one audience question regarding the impact of litigation on run-off activities, Pat Fee acknowledged that “litigation is the tool ultimately,” and, while no company enjoys paying attorney fees, “the reality is there comes a time when you do have to fight and have to let the other side know you’re serious.” Steve Agosta concurred, agreeing that a company “sometimes needs to mobilize and arbitrate, and put people to the proof as to why they are not paying you.” Scott Belden cautioned that, once a dispute moves into litigation, companies “tend to throw it to the lawyers,” who can become “emotionally attached to cases.” Belden, who had aptly noted earlier in the session that reinsurance claims are “not like an electric bill where you send out the bill and the customer pays . . . there often will be disputes,” advised companies to manage their outside counsel closely.



Left to right: Freddie Acevedo (Assurant), Andre Lefebvre (Arrowpoint Capital)

Also in the audience was Conference Co-Chair Jonathan Bank (Locke Lord LLP), who asked the executives whether, in their experience, arbitration panels have perceptions about run-off companies that disadvantage a run-off company in arbitration. Pat Fee responded with “a qualified no,” noting that Hannover’s ownership of Clarendon was well-known and “orphan organizations” might fare differently. Steve Agosta suggested that run-off entities may even have an advantage, in that those entities tend to “play in that space more, and there are advantages to be had in terms of relationships with counsel and arbitrators.” The speakers’ commentary provided a timely bridge to further discussion of the arbitration process in the next education session, “The Great Debate – Your Vote Counts.” ■

## Education Session Summary

# The Great Debate – Your Vote Counts

Summary by Bina T. Dagar, Ameya Consulting

Moderated by Mary Lopatto of Chadbourne & Parke, this panel included Eric Haab of Foley & Lardner, Joe McCullough of Freeborn & Peters, Francis Mackie of Edwards Wildman Palmer and Brian O’Sullivan of Mayer Brown. The panel held energetic discussions on five issues related to the integrity of the arbitration process and

of the arbitrators. Weaving into the discussion cases of interest to the industry and those that have reached the courts, this panel brought to life factual scenarios that engrossed the audience. Each of two panelists took a viewpoint for or against a topic culminating in an audience vote. What follows is the percentage of YES and NO votes for each of the five issues:

The Issues	YES	NO
<b>1. Governing Law and Honorable Engagement Clauses</b> How far arbitrators have to follow the law in deciding a dispute if the reinsurance contract clearly states what law applies, and there is no Honorable Engagement Clause. No matter what the reinsurance contract says about governing law or interpreting the contract as an Honorable Engagement, do arbitrators always have the right to base the award on their own sense of fairness and business judgment?	35.2%	64.8%
<b>2. Consolidation</b> In the absence of a provision in the reinsurance contract permitting or requiring consolidation, when if ever, should a party be required to arbitrate a dispute in a consolidated arbitration? As posited in the hypothetical, should the panel order the six reinsurers to proceed with a single consolidated arbitration proceeding?	30.4%	69.6%
<b>3. Insolvency</b> How, and to what extent should reinsurers of an insolvent insurer be permitted to “interpose defenses” or otherwise to associate in a receiver’s claims adjustment process? Does this procedure (whereby reinsurers will receive notice of each impending decision with respect to policyholders’ claims) give effect to reinsurers’ rights to “interpose” defenses or otherwise to associate in the defense of the claim?	50.9%	49.1%
<b>4. Attorney-Client Privilege</b> Whether ceding companies may withhold claim, coverage, allocation and ceding analysis from reinsurers that would otherwise constitute the “business of insurance” by claiming attorney-client privilege? Should the Cedent’s assertion of privilege be upheld?	31.1%	68.9%
<b>5. Arbitrator Disclosures</b> Is it acceptable for parties and/or law firms to have “go to” arbitrators, as long as the arbitrators disclose these appointments and state on the record that they will be unbiased in deciding the case on the merits – and even though it might appear to outsiders that that arbitrator was a “captive” arbitrator?	59.1%	40.9%

The panel tweaked or added facts to some of the hypotheticals suggesting nuances that are typically found in the world of arbitrations. These were put to vote as well with attention-grabbing results. ■



Left to right: Moderator Mary Lopatto (Chadbourne & Parke), Brian O’Sullivan (Mayer Brown), Eric Haab (Foley & Lardner), Francis Mackie (Edwards Wildman Palmer), Joe McCullough (Freeborn & Peters)

## Voting on AIRROC'S Agenda in Real Time



For the 2011 Event, the Board retained electronic voting services to gather real-time information. With input from all Committees, questions were drafted and designed to garner data relevant to key topics on AIRROC's agenda.

Results were both immediate and automatically subcategorized by topic and responder (e.g., members, lawyers, etc.). A final report of the results will appear in the March 2012 edition of AIRROC Matters. ■



Marianne Petillo (ROM Re); Mike Zeller (AIG) Surveys don't hurt!!!



## Closing Remarks/Wrap Up

**James Veach and Lawrence Greengrass**  
Partners, Mound Cotton Wollan & Greengrass LLP

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# AIRROC/R&Q Golf Day

## “Could Not Have Had a Better Day for Golf”

By Ed Gibney, CNA

For the 3rd consecutive year, the AIRROC/R&Q Commutations and Networking Event got started with many attendees teeing it up at the Royce Brook Golf Club in Hillsborough, NJ, only about 12 miles or so from the East Brunswick Hilton, on Sunday, 16 October. The weather cooperated once again. For this year’s AIRROC/R&Q Golf Day it was a spectacular fall afternoon and the course was in excellent condition, a true test of golfing skill. The team of Paul Mooney, Alex Keville and Tim Stalker took the top prize with a very impressive score of 8-under 64.

See box for the complete list of prize winners.

Everyone enjoyed a barbecue lunch upon arrival at Royce Brook as well as a buffet dinner and open bar after golf. ■

### Team Scramble

- 1<sup>st</sup> Place** – 64 - Alex Keville, Paul Mooney, Tim Stalker  
**2<sup>nd</sup> Place** – 69 – Ricardo Cantilo, Rick Grant, Betsy Mitchell, Ron Smillie  
**3<sup>rd</sup> Place** – 70 – Roger Flores, Frank Pecht, Andy Ward, Jeff Winters  
**Closest to the Pin** – Rick Grant, Jeff Winters  
**Longest Drive** – Ed Gibney, Jack Ignatowitz

*Many thanks to Citadel Risk for sponsoring this event.*

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## AIRROC Publications Committee



*Left to right:* James Veach (Mound Cotton Wollan & Greengrass), Bina Dagar (Ameya Consulting), Trish Getty (AIRROC), Editor-in-Chief Peter Scarpato (Conflict Resolved), Co-Chair Leah Spivey (Munich Re), Vivien Tyrell (Reynolds Porter Chamberlain), Connie O'Mara (O'Mara Consulting), Nicole Myers (Myers Creative)

*Not pictured:* Co-Chair Colm Holmes (Zurich), Jonathan Bank (Locke Lord), Nigel Curtis, Dale Diamond, Marc Abrams (Wollmuth Maher & Deutsch), Joe Monahan (Saul Ewing), Mark Peters (Edwards Wildman Palmer), Gina Pirozzi (G. Pirozzi Consulting), Fred Pomerantz (Wilson Elser), Fran Semaya, Maryann Taylor and Mike Walsh (Boundas Skarzynski Walsh & Black) and Larry Zelle (Zelle Hofmann)

## AIRROC Run-off Award Continued from Page 5

plan and petition, please see Mr. Rothseid's article in AIRROC Matters. A. Rothseid, The Rhode Island Solution, AIRROC Matters, Fall 2011, Vol 7, No. 3 at 18-21. In his acceptance speech, Mr. Rothseid commented that despite initial trepidations over the US market's appetite for a solvent scheme, the plan survived two creditors' challenges and ultimately garnered "overwhelming support from this community" because "it was fair, transparent, the court supervised process was clear," and "[the Plan] was a rationale response to close exposures that were over thirty years old."

While recognizing that time will tell if the GTE RE Commutation Plan is the harbinger of a new wave of accelerated closures for US legacy exposures, Mr. Rothseid believes that the GTE Re plan is "certainly a start in a new and different direction" or as he stated: "a new arrow in our quiver to resolve run-off exposures . . . demonstrating that, when done correctly, everyone wins."

Kudos to Andrew Rothseid and Gary Lee for this well-deserved recognition. ■

## AIRROC Matters in Transition Continued from Page 3

The results included the following items:

- Volunteers to write article on various topics, including arbitration disputes and contract interpretation issues;
- Suggestions for future Special Editions of AIRROC Matters covering run-off metrics and strategies for success, the economy's impact on run off, "winners and losers" as determined by changes in liquidity and surplus, and an entire edition of "point/counterpoint" articles; and
- Communication with membership via LinkedIn and a blog.

If you did not get a chance to respond to the survey during the October event, please do not hesitate to communicate your ideas and any interest you may have in becoming part of the Publications Committee or authoring articles to any Board Member or Publications Committee Member.

The best is yet to come, please remember that AIRROC Matters and so do you! ■

## Practicalities of Part VII Transfers Continued from Page 9

the FSA wants every individual policyholder to be notified. Jim Moran noted that the presiding judge must see that companies have made every possible effort to effectuate notice, especially for transfers involving US policyholders where state-by-state notice regulations may differ.

Court-approved Part VII transfers have held up well. Nigel Montgomery was unaware of any court cases challenging them post-approval. In Jim Moran's experience, many issues are resolved before the litigation stage with the objector's business occasionally carved out via compensated settlements, after which the IE report is adjusted to reflect the change.

The balance of the presentation included discussions on the impacts (including to offsets) of moving the reinsurance asset for the reinsurer, newly reinsured company, and formerly reinsured company, and the 12 to 18 month time period and enormous cost to implement Part VII transfers, culminating with an audience vote on the question whether an equivalent to Part VII transfers will appear in the US. Response: 61% no; 39% yes. ■



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### Message from Executive Membership Director Continued from Page 1

As I write this at the end of October, I have interviewed 68 AIRROC member participants to gain insight into the values they find as an AIRROC member, their desires for education topics, their experiences using the Dispute Resolution Procedure (DRP), and much more. We will present an article in the upcoming first edition of 2012 to report the input from our members.

Speaking of the DRP, while several companies have used the process and are quite happy with it, many need to fully understand the DRP and/or be comfortable with its usage. We are therefore planning to present a mock DRP process in several cities. Watch for the locations!

There is a lot going on behind the scenes as we shake, shiver and rock-n-roll to make this association continue to flourish and provide you with meaningful education and services.

Once again, our hat is off to members of this fantastic Publications Committee who continue to deliver one excellent newsletter after another. Our special thank you to our Editor-In-Chief Peter Scarpato.

*Happy New Year!* ■

### Special Deputy Bing Continued from Page 15

Department of Financial Services under the leadership of a new Superintendent of Financial Services, Benjamin Lawskey. Mr. Bing reported that the new Department has divisions that will focus on financial fraud, consumer protection, real estate finance, and capital markets. Former Superintendent of Insurance James Wrynn will remain as the Deputy Superintendent of Financial Services.

### Post Script

Mr. Bing attended the AIRROC/R&Q Opening Dinner on Monday night and remained with Mr. Sherwood the following day to experience AIRROC's commutation meetings or, as he put it, "speed dating for reinsurers." We expect to see him return to address us at future AIRROC educational events and to report on how he is faring in his new position and with respect to the goals he announced in his remarks. ■



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# AIRROC



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