A lush green forest scene with tall trees, mossy rocks, and a bird in flight. The background is a dense forest of tall, thin trees with vibrant green foliage. In the foreground, there are large, moss-covered rocks. A small bird is flying in the center of the frame. The overall atmosphere is bright and natural.

AIRROC

ANNUAL 2022

Out of the Woods?



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A Bright Future for Legacy

AIRROC Annual 2022

I took a walk in the woods and came out taller than the trees.

— Henry David Thoreau

Welcome to the second *AIRROC Annual* featuring the highlights of 2022. This year's theme, "Out of the Woods?" is referenced in multiple ways throughout the issue. All of us – personally and professionally – have weathered a dense forest in the last few years. Let's now look ahead with hope and optimism that we can feel and see the sunbeams through the trees to a bright future for legacy.

Readers might recall that when we published the *AIRROC Matters* magazine (precursor to the electronic *AIRROC Update*), I chose an animal that comprised my personal theme for the issue. My choice this time is the groundhog. While thoughts of the groundhog go to weather prediction, I chose it to symbolize us coming out of hibernation and returning to our "new" normal activities. *AIRROC's* new normal will continue to offer options for better engagement for our members and partners.

AIRROC saw a return to our regular schedule of in-person events in 2022, but also continued with virtual delivery formats to which we have all become accustomed. We are a driving force behind so many of our professional and sometimes personal relationships, connections, and industry colleagues. Momentum continued with membership and attendance, committee activity, the NextGen Council, podcasts, and On Demand offerings.

None of this would happen without the hard work and support of the Board of Directors. I sincerely thank them for entrusting me with such an important job that I enjoy so much! One of the highlights of working on this Annual was creating the "Getting to Know You" article about our board members. We asked them to answer several questions – many of them entertaining, non-business



related – and discovered the responses gave us insight on each of them as individuals. They were so fun to read. Within these pages you will find never before published articles, perspectives, photos and more – each piece a celebration of who we are: *AIRROC*, a legacy community of our members and partners, and many exceptional people who support our initiatives.

One of the highlights of working on this Annual was creating the "Getting to Know You" article about our board members.

First, be sure to read "We're Back – *AIRROC Annual: The Sequel*" by board members and chairs of the Digital Content Committee, Dawn Ballin of Enstar (US) and Brendan McQuiggan of Brandywine Holdings. Other articles feature the highlights of our year that are deserving of celebration such as the presentation of the *AIRROC* Team of the Year, the Trish Getty Scholarship award, big steps forward for our NextGen Council, and a wildly successful October reunion. Within these pages you will also find several original articles on hot trending topics of interest to the legacy community.

We begin with an executive summary penned by Robbie Kerr and Laura Pearson regarding the PwC 2022 Global Insurance Run-Off Survey Results. The survey results have generated significant buzz as they document the uptick in deals, the huge \$960 billion in estimated run-off liabilities, and the optimistic sentiment in the legacy market for a bright future.

Up next, our longtime friend and former board member, founding Editor and chair of the Publication Committee for many

Carolyn Fahey

years, Peter Scarpato, provides us with an exposé on "Benefits of Reinsurance Mediation" to bridge the gap between troubled counterparties.

Finally, Scott Davis and John Cruciani of Husch Blackwell summarize their presentation at our July membership meeting, taking us on the dance floor to explain "The 'Texas Two-Step' Bankruptcy Strategy."

Of course, we would be incomplete without a photo montage of attendees at the 18th Annual Legacy Transactions & Networking Forum as the *AIRROC* community once again gathered in Jersey City, New Jersey, in October.

And so, another positive year, another successful *AIRROC* event, and a feeling of promise as we continue to venture out of the woods and stand taller together. ●

With Warmest Regards,

Carolyn Fahey
Executive Director



Carolyn Fahey has been the Executive Director of *AIRROC* for eleven years. In that role she is the voice of *AIRROC* and the U.S. runoff industry. She works with the *AIRROC* Board of Directors to set and execute the overall strategy and operations for the association. She is a frequent speaker, author and educator on the legacy sector. Ph: 703-740-7527. carolyn@airroc.org

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A Bright Future for Legacy

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Thanks to Our Corporate Partners

Like a Bridge Joining Troubled Partners...

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Better Together

Legacy Transactions & Networking Forum

New Faces Going Places

NextGen Council Corner: 2022 Year in Review
Sunny Liu

The "Texas Two-Step" Bankruptcy Strategy

Dancing to the Beat of Divisive Mergers
Scott L. Davis & John J. Cruciani



AIRROC On Demand

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Published articles should not be deemed to reflect the views of any AIRROC member, unless so stated. AIRROC endorsement of any views expressed in articles should not be inferred, unless so stated.

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WE'RE BACK! AIRROC ANNUAL THE SEQUEL

Welcome to the second edition of the AIRROC Annual! Last year's preface was in a question-and-answer format, and the last question was: "Will this [AIRROC Annual] be a recurring edition every year?" We said then that we hoped it would be, and it is good to be back. The Annual is a platform for AIRROC to highlight our original content and spotlight some of the most interesting and impactful presentations and partner articles of the past year. The magazine also provides our members with an opportunity to reflect on the year in review. It was just that that kind of reflection, during one of the monthly meetings of the Digital Content Committee, that gave us this year's theme, and inspired our beautiful cover art:

Are we Out of the Woods?

Many signs point to yes. The darkest days of the pandemic are now in the rear-view mirror, and thanks to the modern marvel of vaccines and the hard work and dedication of front-line workers, many of our professional and personal lives are returning to something akin to normal. Many industries (with the notable exception of leisure and hospitality) are now back, near, or exceeding, their pre-pandemic levels of employment. U.S. air passenger volume is nearly fully recovered.

But have we truly found the edge of the woods? The pandemic has left its mark, in lives lost and paths altered.

And the activity in the run-off insurance industry is "buoyant," as reported in the PwC survey that is summarized in this edition.

But have we truly found the edge of the woods? The pandemic has left its mark, in lives lost and paths altered. The recovery has been uneven and inequitable, and has brought its own challenges - inflation, return to work resistance, mental health challenges, conflict in Ukraine, and a surge in

illnesses other than Covid, such as flu and RSV, as the population returns to public spaces and mask mandates are relaxed. All this, while new Covid variants continue to emerge and circulate.

The more we thought about it, the less certain we were, and thus our title is inquisitive, rather than declarative. We hope that the clearing you see ahead on the cover is the edge of the forest, and not just a break in the trees. The cover, as well as our beautiful illustrations were thankfully provided by Chilean illustrator Rafael Edwards. His art previously graced the covers of *AIRROC Matters* and there was no question that we wanted his artistic visions included in the *AIRROC Annual*.

We would be remiss if we failed to spotlight others who contribute to the Digital Content Committee. We simply couldn't produce such high-quality publications without the assistance of Maryann Taylor. Her organizational skills keep us all on track and her great ideas always take us to the next level. As with all things AIRROC, it all comes back to Carolyn Fahey. Her passion for what she does shines through in everything she touches.

Carolyn's work on the Digital Content Committee is no exception. Former Digital Content chair Peter Scarpato is on the pulse of great articles to share and is an excellent writer who regularly contributes content along with clever titles and subtitles. Connie O'Mara's great ideas and connections in the industry also drive relevant content. We thank our great team for their contributions to the Digital Content Committee publications.

If you like our content and would be interested in connecting with others in the run-off industry, the Digital Content Committee is always looking to recruit new members. If fear of social media and lack of web platform experience is holding you back, don't worry, we didn't have these skills either. We have True Blue Media, an excellent partner who is responsible for making

our work shine! New members simply attend virtual meetings and highlight content relevant to our industry. Participation can be as much or as little as schedules permit. New members equal new perspectives, ideas and partnerships.

Wherever we go, we go together as an industry. We hope you enjoy this year's issue, and we look forward to seeing everyone in 2023. ●

Dawn Ballin, Senior Vice President, Head of Claims, Enstar (US). Enstar is a leading global insurance group that delivers innovative insurance solutions through a network of group companies.

Brendan McQuiggan, Senior Vice President for Reinsurance at Brandywine Holdings (a division of Chubb Insurance Company). The Brandywine Reinsurance Group is responsible for all aspects of reinsurance in connection with Chubb's legacy insurance book.



About the Artist

Since 2012, the uniquely talented artist behind our eye-catching illustrations featured in AIRROC publications is Rafael Edwards of Chile. A master of different artistic styles, Rafael uses them to meet the challenge of visually capturing legacy and runoff themes, infusing wit and whimsy into his works. His goal is to present the essence of the article rather than explain it. Rafael is a partner in the design firm of Myers Creative Services. www.myerscreative.net. 917-609-8029. rafael.edwards@gmail.com

AIRROC 2022 Accomplishments by the Numbers

- **Hosted 10 events** (in person, hybrid and webinars) with a total of 24 different education sessions.
- **Expanded our NextGen Council**, a group of young professionals tasked with helping to connect and engage the next generation of legacy leaders.
- **Established a Regulatory Committee** which will work collectively to educate on legacy at the NAIC and for state insurance departments.
- **Registered a total of 1,200 participants for AIRROC's 2022 programs** with a consistent level of at least 80% of our registrants logged in to participate in the live programs.
- **Education on legacy** continued with sessions for the Captive Insurance Companies Association, at the Oklahoma IBT Forum, the Captive Insurance Council of the District of Columbia, the South Carolina Captive Insurance Association, at the PwC Legacy Survey Launch Event, and the International Association of Insurance Receivers Issues Forum at the NAIC in Portland. We had a featured article in the Captive Times.
- **Published 94 new articles** in AIRROC Update with the website being accessed more than 6,000 times.
- **"The Legacy Life" podcast** reached a milestone of 2,400 downloads. There are 20 episodes available.
- **The October Transactions Forum** was a huge success with more than 200 attendees and offered a full live stream of the education day. Survey results show that 40% of the delegates met with 7-9 companies and 20% with 10 or more. That means that 60% of our delegates met with 10 or more different companies all while they were in New Jersey. AIRROC's importance as a business platform continues to shine!
- **Welcomed 4 new members:** Acrisure Re, ANS, Eversheds Sutherland, Gerber Ciano.
- **Continued to add content to AIRROC On Demand.** There are 63 video sessions in our growing library that can be accessed at any time by AIRROC members. We added 21 new modules in 2022 and there are nearly 20 different searchable subject categories. All are great resources for our members!

Team Work is Dream Work

Connie O'Mara & Jack McGregor

Fortitude Re named AIRROC "Team of the Year" for 2022



(left to right) Elaina Charas, Claire Zheng, Marc Pezzicara, Janice Marks, Lindsey Cassidy, Kevin Appenzoller, Jack McGregor

Each year, the AIRROC Legacy Transactions and Networking Forum awards the "Person of the Year" to someone who has had a significant impact on the run-off industry. This year, for the second time in its history, AIRROC bestowed the honor to a team of industry professionals. The award acknowledges the team at Fortitude Re whose vision, hard work, and legacy expertise has made them Bermuda's largest multi-line composite reinsurer. To put their accomplishments in perspective, AIRROC asked them to answer some key questions about their success.

Connie O'Mara ("Q"): What was the most challenging aspect of your work in forming the current Fortitude Re entity?

Fortitude Re ("A."): The challenges in legally and operationally separating Fortitude Re from its former parent were enormous, though not unexpected, and we were grateful to have AIG's dedicated commitment to, and cooperation in, that process. As a newly-independent entity, we needed to hire and align staff, stand up new IT infrastructure and financial systems, fully build out all our operations, and constructively engage our regulators and other stakeholders – all while helping facilitate a successful capital raise process. We accomplished all of this on schedule and under budget, which

is a great testament to the strength of, and collaboration within, the broader Fortitude Re team.

Q. What do you enjoy most about the current team environment?

A. We're deeply committed to collaboration and teamwork, and we're fortunate to have a great mix of very seasoned insurance professionals and younger talent in the organization. We work hard but we also celebrate our accomplishments. Our team embraces the challenges of building and refining a world-class organization and we welcome all constructive input to inform that journey. We have our occasional healthy debates, but we genuinely like and respect each other and we're all aligned around our mission and purpose.

Q. What challenges or opportunities for your company and the run-off industry do you see in the future?

A. The run-off industry has crossed an important threshold in that legacy transactions are now largely embraced in C-suites and boardrooms as key strategic elements of sellers' capital and reserve management, and strategic planning playbooks. This has transpired during a hard market in which sellers are particularly motivated to redeploy capital and management attention into profitable, forward-looking opportunities. That rising tide raises the profile for, and likely lifts the boats of, all of us in the legacy industry.

Although many legacy veterans ended up in the business by circumstance or accident, the industry now offers an attractive long-term career choice in a dynamic, growing market.

This pivot has, of course, attracted investor capital to the legacy space and has given rise to a host of new market entrants —including Fortitude Re. We expect to see some increasing differentiation and specialization in which legacy reinsurers will find and define their space in the market in a way that plays to their respective strengths. In the meantime, we're hopeful that the market retains appropriate underwriting and pricing discipline.

Q. How do you describe to someone who is not in the run-off business what you do for a living?

A. The legacy market provides insurance and reinsurance counterparties breathing room to focus on the growth and innovation necessary to protect people and organizations from the unpredictable. Fortitude Re, in particular,



(left to right) Carolyn Fahey, Jack McGregor and Bill Goldsmith

facilitates those efforts by way of a very large, rated, composite balance sheet, through which we can service both P&C, life and retirement business. We help insurers under pressure from investors and boards to improve profitability, reduce management distraction, and release trapped capital, while always ensuring appropriate and responsible treatment of our clients' stakeholders, including policyholders and claimants.

Q. How can the industry attract new talent to the run-off space?

A. Although many legacy veterans ended up in the business by circumstance or accident, the industry now offers an attractive long-term career choice in a dynamic, growing market. Legacy reinsurers, like Fortitude Re, are generally smaller, more collaborative organizations in which younger, newer talent can quickly gain exposure to many aspects of the insurance and reinsurance business. We're pleased by the good work AIRROC and other organizations

are doing to position the industry as appealing for younger and more diverse talent. We're no longer "your parents' insurance industry!" ●



Connie O'Mara is a member of the AIRROC Advisory Council, a AAA neutral, ARIAS certified Arbitrator, and an expert witness on coverage issues arising from run-off insurance and reinsurance matters. She can be reached at 609-502-8607, connie@cdomara-consulting.com.

Jack McGregor, Chief Property & Casualty Reinsurance Officer, Fortitude Re, Jersey City, NJ.

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A Knight to Remember

Grant Donkervoet

AIRROC Awards 11th Annual Trish Getty Scholarship



Lori-Ann Knight. (Group photo: left to right) Katie Reynolds, Nate Zwick, Lori-Ann Knight, Grant Donkervoet, Natalie Weedman, Jessica Groenewegen



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AIRROC — in conjunction with the NextGen Council — is excited to present the 2022 Trish Getty Scholarship to Lori-Ann Knight. Lori-Ann is a sophomore at Howard University in Washington D.C. majoring in mathematics with a concentration in actuarial science. Additionally, she is pursuing a minor in computer science.

Established in 2012, the \$5,000 annual scholarship is in honor of Trish Getty, the founding Executive Director of AIRROC. The main purpose of the scholarship is to reward exceptional undergraduate students studying insurance, risk management or actuarial science. Students apply by submitting an essay, which is reviewed by a subcommittee of AIRROC board members to select the winner. This year a concerted effort was made to broaden the geographic outreach of the scholarship applicants and we were not disappointed. Lori-Ann stood out for

her excellent academics, leadership, and involvement in many extracurriculars. We had an opportunity to get to know her at the 2022 AIRROC Legacy Transactions & Networking Forum in Jersey City, where she was presented with the award and gave an inspiring acceptance speech.

A career in insurance is not a common ending point for many people in Lori-Ann's home country of Jamaica.

A career in insurance is not a common ending point for many people in Lori-Ann's home country of Jamaica. However, her early love and capabilities in math, have led her to pursue a path in insurance. Her commitment to insurance was validated after she attended a Casualty Actuarial Society mentor-led summer program. The program gave her a glimpse into the interesting and friendly people who work in insurance and the diverse problems the industry deals with every

day. Lori-Ann strongly believes in the purposeful values that insurance provides. Along those lines, she thinks it is imperative not just to pursue a major that opens up career opportunities in the insurance industry, but to be an ambassador of the industry to get the word out about its great opportunities and societal impact. These are the attributes of future leaders in our industry and Lori-Ann represents them in spades.

Beyond just academics, Lori-Ann is very active outside the classroom. She is a social media manager for Gamma Iota Sigma, the vice president of the Rotaract Club, and a member of the Caribbean Student Association. In her pursuit to eventually join the insurance industry, she is keen to pay it forward and encourage others to explore a career in insurance.

AIRROC is excited for Lori-Ann and can't wait to see what she accomplishes in the insurance industry. ●

Grant Donkervoet, P&C Analytics Lead, Vice President, Casualty Underwriting, Swiss Re.

Getting to Know You

Carolyn Fahey

Board Members Tell-all



We value each and every member of our Board of Directors and benefit greatly from their individual and collective expertise, leadership, compassion, and generosity. We value not only today's Board but all of those who have served throughout the past 18 years that AIRROC has been in existence.

The leadership from our current Board of Directors has been invaluable as we navigated the challenges of a global pandemic and the changing workplace environment. They are rock stars who bring their most relevant and valuable skills, experiences, connections, and ideas to the table to help make the big decisions every day and create a long-term vision for AIRROC. They are in the trenches doing the work and are committed to seeing AIRROC grow and thrive. We appreciate their commitment to the AIRROC mission and thank them for being all that they are and doing all that they do. We are grateful for their service and look forward to their continued guidance as we move into 2023.

Many of you are familiar with our Board members from AIRROC events, as colleagues, counterparties and interactions on a professional basis. Rather than the typical name, rank, serial number and professional background introduction to our Board, we thought it would be interesting to ask them some amusing and illuminating questions that would allow you to get to know them better – as the unique and creative individuals that I have the pleasure to work alongside. As you will see, their answers did not disappoint.



Bill Goldsmith
(Chair), Associate General Counsel Reinsurance, AIG

Q. Best advice ever received.

A. There is only one person truly guaranteed to be there for you through thick and thin – yourself!

Q. If you were a high school teacher, what subject would you teach?

A. Writing.

Q. What do you find most rewarding about your AIRROC Board experience?

A. Getting to know and work with colleagues from other companies. Especially since I deal primarily with disputes in my “day job,” it’s good to collaborate with those more on the business side of runoff.

Q. What actor would play you in the action thriller “AIRROC the Movie”?

A. Rick Moranis!!

Q. What was your first job?

A. Re-shelving books at the local library.

Q. What is the first thing you would buy if you won the lottery?

A. Another lottery ticket – things happen in “threes.”

Q. When it comes to candy or desserts, what is your guilty pleasure?

A. Oreos hands down.

Q. Where is your favorite destination that you have visited, and why?

A. British Virgin Islands. Fair winds, fair seas and great rum.



Tom Mendralla
(Co-Vice Chair), Vice President, Portfolio Management, Swiss Re America Holding Corporation

Q. Best advice to give to younger colleagues entering the legacy space.

A. Attend AIRROC events to connect with the old folks in the same space.

Q. If AIRROC were to be on the cover of a national newspaper or magazine in five years, what would be the headline?

A. “Young Professionals Thriving in the Re/Insurance Space.”

Q. Favorite song to crank up in the car.

A. Anything AC/DC.

Q. If you were a high school teacher, what subject would you teach?

A. Most important subject – Math of course.

Q. What would people find most surprising to learn about you?

A. Younger me was an adventure junkie – Spelunking, skydiving, rock climbing, backpacking, winter camping in the wilderness, and of course, scuba diving. Still tent camp every year.



Betsy Mitchell
(Co-Vice Chair) Reinsurance Manager, A G. Risk Management Inc.

Q. Best advice ever received.

A. Treat people as you want to be treated.

Q. Best advice to give to younger colleagues entering the legacy space.

A. Learn, take opportunities to do different things.

Q. Favorite song to crank up in the car.

A. Any U2 or Pink Floyd.

Q. When it comes to candy or desserts, what is your guilty pleasure?

A. All!

Q. What is one thing you cannot live without?

A. Family and friends.



Marianne Petillo
(Treasurer), President and CEO, ROM Reinsurance Management Company

Q. Best advice to give to younger colleagues entering the legacy space.

A. Don't be afraid to take chances and always ask questions if you're not sure

about something. If you don't know something, chances are someone else doesn't either. This applies across all industries, not just the legacy space.

Q. Favorite song to crank up in the car.
A. RESPECT by Aretha Franklin.

Q. If you were a high school teacher, what subject would you teach?

A. Spanish, Italian or Portuguese, any of these three romance languages that I speak.

Q. What is the first thing you would buy if you won the lottery?

A. I would buy property to build a no kill animal shelter and try to save as many animals as possible.

Q. When it comes to candy or desserts, what is your guilty pleasure?

A. Smarties.

Q. Where is your favorite destination that you have visited, and why?

A. Alaska because I felt one with nature.

Q. What is your favorite movie quote?

A. "Snap out of it!" Spoken by Cher to Nicholas Cage in Moonstruck.



Dawn Ballin
Senior Vice President and Head of Claims, Enstar (US)

Q. If you were a high school teacher, what subject would you teach?

A. I would teach history. It was my favorite subject throughout school. I loved learning the lessons of the past.

Q. What do you find most rewarding about your AIRROC Board experience?

A. I enjoy meeting people from across the runoff sector. It was really nice to connect with the group during the pandemic.

Q. What was your first job?

A. I was a clerk for a N.J. Superior Court Judge in the Criminal Division. I learned a lot in this role but, most

importantly that I didn't have the stomach for criminal law.

Q. What would you like to accomplish in the next 12 months as a Board Member?

A. I am co-chair of the Digital Content Committee. I would like to work to increase the number of committee members. I would also like to educate AIRROC members on the committee's purpose and ensure members understand participation can be as little or as much as desired.

Q. What is the first thing you would buy if you won the lottery?

A. I would buy a trip around the world. I love to travel, see new things and experience different cultures.

Q. When it comes to candy or desserts, what is your guilty pleasure?

A. Peppermint bark is one of my guilty pleasures. I only have it around the holidays and I make it with my kids.

Q. What is one thing you cannot live without?

A. My family.



Ed Hochberg
Head of Global Risk Solutions, Managing Director, Guy Carpenter & Company

Q. Favorite song to crank up in the car.

A. "Backstreets" by Bruce Springsteen.

Q. If you were a high school teacher, what subject would you teach?

A. Social Studies/Economics.

Q. What was your first job?

A. Dairy aisle at Grand Union supermarket.

Q. When it comes to candy or desserts, what is your guilty pleasure?

A. Key Lime Pie.

Q. Where is your favorite destination that you have visited, and why?

A. Hard to pick one, but probably Israel...doesn't matter your religion...it all started there (or near there).

Q. What is your favorite movie quote?

A. "If someone asks you if you're a god, you say YES!" (Winston Zeddemore from "Ghostbusters").

Q. What is one thing you cannot live without?

A. My family.



Brendan McQuiggan
Senior Vice President, Reinsurance, Brandywine Holdings/Chubb

Q. Best advice ever received.

A. There is no substitute for preparation, and you cannot over prepare. A mentor of mine shared that with me in my first weeks after entering private practice, and it has proven true over and over again in my career.

Q. Best advice to give to younger colleagues entering the legacy space.

A. Say "yes" to every professional opportunity you are presented with, even (especially!) if you are not certain about it. An introduction to a new line of business, a speaking engagement, a writing opportunity, a happy hour at the end of a long day that you would be perfectly happy to skip. You never know when or where you are going to be presented with the opportunity that could change your life – be open to the possibilities. It has now been 15 years since I received a call from someone (who is still a colleague), asking if I would be interested in a job focused on reinsurance. "Sure!" I answered. "What's reinsurance?"

Q. If AIRROC were to be on the cover of a national newspaper or magazine in five years, what would be the headline?

A. AIRROC's "CLP Designation:" the Most Sought After Certification in Insurance.

Q. Favorite song to crank up in the car.

A. My car radio has a station called "Yacht Rock." My kids cannot stand it,

but you will definitely find me singing along to anything by Hall and Oates or Steely Dan.

Q. What would people find most surprising to learn about you?

A. I enjoy off-roading driving in Jeeps and trucks with big tires. I buy a surf fishing permit for the state of Delaware every year just because it is so fun to drive out on the beaches.

Q. What is the first thing you would buy if you won the lottery?

A. A fully restored 1977 Ford Bronco.

Q. When it comes to candy or desserts, what is your guilty pleasure?

A. Chocolate chip cookies. Easy to learn, difficult to master. I am always on the hunt for a great cookie – the secret is finding a perfect balance between dark chocolate and the salt.

Q. What is your favorite movie quote?

A. All of the one-liners from "Airplane!" are in constant use around our house, and now the kids are in on it too. "And don't call me Shirley."

Q. What is one thing you cannot live without?

A. My lovely wife Erin and our two children, Gemma (10) and Jack (8). Also, Jeeps and chocolate chip cookies.



Sally Redd
Director of Reinsurance Administration, Allstate

Q. Favorite song to crank up in the car.

A. Since moving to Florida, it has been Island in the Sun by Weezer.

Q. If you were a high school teacher, what subject would you teach?

A. Algebra.

Q. What would people find most surprising to learn about you?

A. I have had a driver's license in six states.

Q. What is the first thing you would buy if you won the lottery?

A. Second home closer to siblings.

Q. Where is your favorite destination that you have visited, and why?

A. British Virgin Islands because it was a unique trip. My family rented a catamaran, and my brother was the captain. We lived on it for a week and island hopped.



Chris Reichow
U.S. General Counsel, Executive Vice President, R&Q Insurance Holdings Ltd.

Q. Best advice ever received.

A. Failure is not a bad thing, it means you are trying and learning, if you don't try, you will never move forward in life.

Q. Best advice to give to younger colleagues entering the legacy space.

A. Legacy is a challenging business and constantly changing as the insurance industry evolves. Companies are looking for new and creative ways to transfer risk and it creates opportunities for young professionals to grow and be part of the next evolution of legacy.

Q. Favorite song to crank up in the car.

A. Mr. Brightside.

Q. What was your first job?

A. Newspaper delivery in 3rd grade with my 2 siblings.

Q. What is the first thing you would buy if you won the lottery?

A. A round-the-world plane ticket.

Q. When it comes to candy or desserts, what is your guilty pleasure?

A. Ice cream, pretty much any flavor.

Q. Where is your favorite destination that you have visited, and why?

A. Iceland, people were very friendly, and the geography is so unique and beautiful.



Stewart Richmond
Assistant Vice President, Director Assumed Reinsurance, RiverStone Resources

Q. Best advice to give to younger colleagues entering the legacy space.

A. Build relationships. It's a lot easier to resolve differences when you have a personal relationship and have built trust.

Q. Favorite song to crank up in the car.

A. Anything by the Red Hot Chili Peppers.

Q. If you were a high school teacher, what subject would you teach?

A. I was a high school teacher (prior to law school) and taught history.

Q. What was your first job?

A. Burger King.

Q. What is the first thing you would buy if you won the lottery?

A. Legal services.

Q. When it comes to candy or desserts, what is your guilty pleasure?

A. Ice cream, any flavor!

Q. Where is your favorite destination that you have visited, and why?

A. Alaska – truly the last frontier - is a great place to explore and hike, especially Denali National Park and the Kenai Peninsula.

Q. What is your favorite movie quote?

A. "Bond. James Bond." The perfect introduction and a great set up for "Shaken, not stirred."

Q. What is one thing you cannot live without?

A. A good run outside and not on a treadmill!

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Getting to Know You (continued)



Leah Spivey
Head of Business Runoff
Operations, Munich Re America
Services

Q. Best advice ever received.

A. You may be in your best job now.

Q. Best advice to give to younger colleagues entering the legacy space.

A. Hold on to your opinions until you have enough information to change them, then do.

Q. If AIRROC were to be on the cover of a national newspaper or magazine in five years, what would be the headline?

A. Runoff Industry Association Continuously Runs On Into New Directions.

Q. Favorite song to crank up in the car.

A. Pontoon by Little Big Town.

Q. What actor would play you in the action thriller "AIRROC the Movie"?

A. Sandra Bullock.

Q. What was your first job?

A. Tour Guide at a WWII Naval Exhibit.

Q. What is the first thing you would buy if you won the lottery?

A. A beach house.

Q. Where is your favorite destination that you have visited, and why?

A. Na Pali Coast, Kuai, Hawaii, because it is truly awe-inspiring.

Q. What is your favorite movie quote?

A. "You had me at hello."

Q. What is one thing you cannot live without?

A. My faith.



Bill Teich
Vice President of Reinsurance,
The Hartford

Q. Best advice ever received.

A. You could be replaced tomorrow. Don't think you are so special.

Q. If AIRROC were to be on the cover of a national newspaper or magazine in five years, what would be the headline?

A. Legacy is sexy business.

Q. Favorite song to crank up in the car.

A. Any classic rock.

Q. If you were a high school teacher, what subject would you teach?

A. Financial literacy.

Q. What would people find most surprising to learn about you?

A. I was a cheerleader at the University of Massachusetts.

Q. What actor would play you in the action thriller, "AIRROC the Movie"?

A. Steve Martin.

Q. What was your first job?

A. Grocery store – stocking shelves.

Q. When it comes to candy or desserts, what is your guilty pleasure?

A. Swedish fish.

Q. Where is your favorite destination that you have visited, and why?

A. Porto Portugal, unspoiled beauty on the Douro River.

Q. What is your favorite movie quote?

A. Jaws – "We are going to need a bigger boat."



Mike Terelmes
Managing Director USA,
Compre Group

Q. Best advice ever received.

A. Divert daily, withdraw weekly, abandon annually.

Q. Best advice to give to younger colleagues entering the legacy space.

A. Get any designations/education/etc. early in your career. If you think you don't have time now, just wait...time evaporates the older you get.

Q. Favorite song to crank up in the car.

A. Not my favorite song necessarily, but the other day a Taylor Swift song came on and the volume went up... God, I hope this is anonymous.

Q. Where is your favorite destination that you have visited, and why?

A. Dominican Republic...Great food, great people, great weather (excluding hurricanes).

Q. What would people find most surprising to learn about you?

A. On occasion I fire up the Uber app...as a driver. Good for the soul and yes, I have stories.

Q. What do you find most rewarding about your AIRROC Board experience?

A. Being a part of a process where people that are competitors or on the opposite sides of an insurance matter come together for the benefit of the entire industry is pretty rewarding.

Q. What is your favorite movie quote?

A. "You're killing me Smalls."

Q. What is one thing you cannot live without?

A. Water...Oh, you mean first world things? Probably my phone.

Carolyn: Looks like we will be serving Oreos, chocolate chip cookies, ice cream, key lime pie, Smarties, Swedish Fish and peppermint bark at our next board meeting! ●

Carolyn Fahey is the Executive Director of AIRROC, carolyn@airroc.org

We Say Hello as well as Goodbye ...

We welcome two newly elected Board members: Judy Harnadek who is a Vice President with Resolute Management Inc. and Eric Pince the Director of Insurance Consulting and Technology for Willis Towers Watson. They were both elected by the membership for three-year terms starting January 1, 2023.

We also recognize the contributions of three long serving Board members who departed from their companies this year and thus resigned from the board: Bill Bouvier, Ed Gibney and Mike Fitzgerald. They were all leaders who made an impact on AIRROC's initiatives. Many thanks to all of them.

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Countdown to Legacy Launch

Robbie Kerr & Laura Pearson

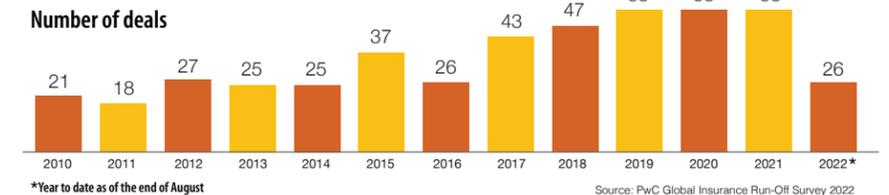
PwC 2022 Global Insurance Run-Off Survey Results

In September, we were delighted to be at Monte Carlo to launch the 14th PwC Global Run-off Survey in conjunction with AIRROC and IRLA. Looking back and reflecting, the room at the Hotel Hermitage was filled with an abundance of energy. We would like to claim it was due to the survey launch and not the Mediterranean location but joking aside and back to the point, we think the excitement captured the mood of the legacy market and its progress since our last in-person survey launch in 2019.

In our latest survey, we estimated the value of non-life run-off liabilities globally to be US\$960 billion, an increase of approximately US\$100 billion since the beginning of 2021 with the majority of the growth estimated in North America. As our last survey predicted, this has translated into the run-off transactions market remaining very active with a significant number of publicly disclosed deals completed in the last three years. In fact, over 150 of the 400-plus deals that have taken place in the last decade have occurred in the past three years. When you put those figures into the context of a global pandemic, geopolitical uncertainty, and macroeconomic challenges, it highlights the market's resilience and ability to provide solutions even in the most taxing circumstances.

Paying closer attention to 2022, we have seen high levels of deal flow come to market for all transaction sizes with a growing number of large transactions in the range of \$500 million to \$1 billion or more. These in particular have been driven by the deployment of strong, long-term capital and the use of

Publicly disclosed deal activity since 2010



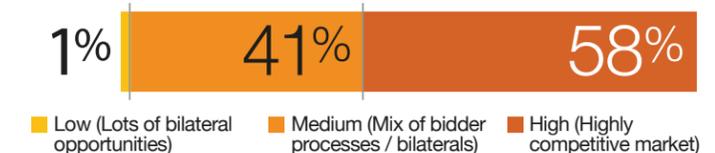
innovative approaches by both buyers and sellers to design legacy solutions. We also continued to see a diversification in the types of liabilities that are transacting fueled by counterparties and acquirers being more comfortable with different lines of business, new underwriting years with unexpired risk, and shorter tail liabilities which allow

Paying closer attention to 2022, we have seen high levels of deal flow come to market for all transaction sizes with a growing number of large transactions in the range of \$500 million to \$1 billion or more.

acquirers to capitalise on the ability to recycle capital quickly.

In terms of pricing, we think it is fair to say the sentiment in the market is that deals are becoming increasingly competitive because of the availability of capital in the market and a growing number of players. It is also our view that the market has entered a new phase where there is more segregation and specialisation coming through, meaning certain deal sizes or books see more competition than

Competition is mounting



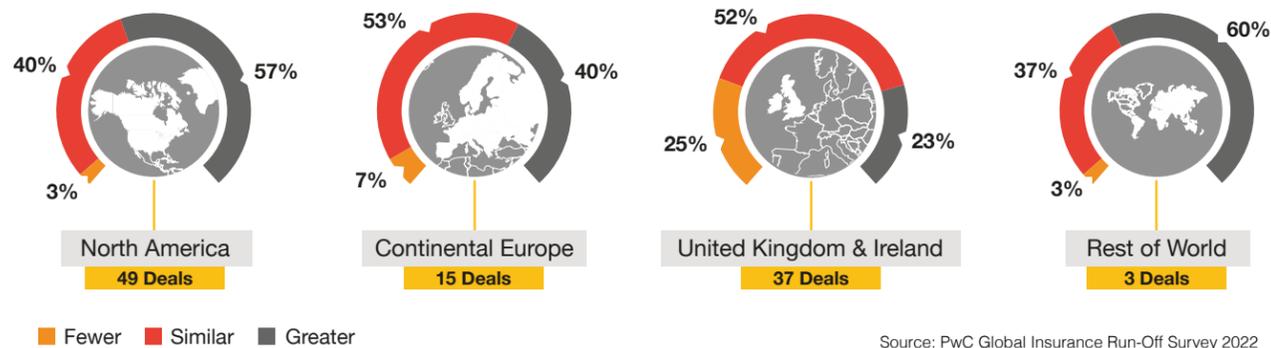
Source: PwC Global Insurance Run-Off Survey 2022

others and certain players are targeting specific areas and lines of business to distinguish their propositions.

That being said, from what we have seen this year, underwriting discipline has generally remained strong and there hasn't been a race to the bottom with arbitrary changes to pricing and modeling assumptions to compete. Acquirers have remained aligned to their strategic priorities. This has meant that some may have not been able to execute on the number of deals they hoped, and for some, seller's deals have been left on the table.

In terms of looking to the future, our survey asked respondents to predict how the relative number of run-off transactions will change in each territory over the next two years in comparison to the previous two-year period. Among the established markets, North America is expected to see the most growth in transaction activity, with 57% of respondents predicting an increase in the number of transactions and 40% expecting the current volume to remain the same. Our view is that we think we will see deal numbers rise with reinsurance risk transfer deals continuing to lead the way and ahead of insurance business transfers ("IBTs") for the foreseeable future. While the

Respondents selected how they predict the relative number of run-off transactions will change in each territory over the next two years in comparison to the previous two-year period.



Source: PwC Global Insurance Run-Off Survey 2022

pipeline of deals coming to market is strong and set to continue, the legacy market may be limited in maximizing its potential by constraining factors such as operational capacity to meet the demand for legacy solutions. We think that focus on target operating models, utilization of technology and outsourcing solutions is going to be very high on the agenda of the acquirers' CEOs and COOs in the next couple of years, and effective investment will assist in more and larger deals being completed.

Our survey also asked respondents where the biggest areas of growth are likely to be.

For the U.S. market, we agree with live M&A creating deal flow. After an active few years for live insurance M&A, many (re)insurers are assessing their strategic priorities which is leading to an

increase in disposals of non-core businesses and review of how capital can be best optimised, including using run-off solutions. Coupling these trends with reduced traditional reinsurance capacity and many insurers announcing they will not be providing cover for certain types of business, we think this gives the legacy market an opportunity to show its ability to provide innovative and creative solutions, as seen with the trend towards large LPT/ADC's where claims handling may not be transferred.

In terms of 'recent underwriting years' and 'corporate liabilities,' it is important to note that these new deal types come with risks and challenges. For many, these will involve non-traditional legacy lines that require specialist skills, innovative approaches, and possibly a willingness to take on emerging

opportunities with less of a track record to rely on. Therefore, thorough but efficient due diligence and a detailed understanding of the deal will be crucial. This is especially true for transactions involving unexpired risk elements and a decrease in the average portfolio

We think that focus on target operating models, utilization of technology and outsourcing solutions is going to be very high on the agenda of the acquirers' CEOs and COOs in the next couple of years...

duration, with shorter-tail books being traded. These transactions can result in greater profit volatility for the acquirer, particularly at the lower end of the deal size range. Additionally, the dynamics of a corporate run-off book can be slightly different from those of a wider insurer book, and care and attention will be needed in both pricing and operation of the book when it is acquired.

One opportunity area we didn't put into this survey question which we think could feature going forward is ESG. With many insurers announcing the cessation of writing business covering carbon intensive assets, there is the obvious opportunity where lines of business will

The biggest areas of opportunity for the non-life run-off market according to Survey respondents.



Source: PwC Global Insurance Run-Off Survey 2022

Respondents' views on the current state of the non-life run-off market.



become non-core. However, there could be an opportunity for the legacy market to go further and be part of strategic conversations with live insurers when establishing a balanced transition plan to net zero.

To round up our thoughts on the year, we will refer to our word cloud from the

survey where our respondents told us that in legacy terms, "ABC" stands for; Active, Buoyant and Competitive.

The non-life run-off deal landscape has continued to evolve through 2022, delivering opportunities and challenges. We anticipate 2023 to be another successful year for our growing

market and look forward to seeing deal solutions become increasingly bespoke, well thought through and, for acquirers, pricing discipline and operational excellence coming to the forefront. ●



Robbie Kerr is a Senior Manager in PwC's Deals Advisory team and focuses on the run-off insurance market. Robbie has experience advising clients on a range of legacy finality solutions including loss portfolio transfers, corporate liability disposals and Lloyd's legacy deals.

Laura Pearson is a Senior Manager in PwC's Deals Advisory team with a focus on the legacy transactions market. She is located in the London office.

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Benefits of Reinsurance Mediation

Peter A. Scarpato

Illustration / Rafael Edwards



For reinsurance disputes, mediation is an available, effective but often misunderstood and underused process for companies seeking an efficient, cost-effective alternative to arbitration or litigation.

As the aggravation, expense and time required to arbitrate or litigate escalate, parties are turning by contract or ad hoc agreement to mediate reinsurance disputes. For them, LESS IS MORE; that is, compared to arbitration or litigation, mediation is a less aggressive, less costly, and less damaging alternative. More importantly, in the hands of a skilled mediator, parties experience the POWER to mold a settlement more creatively than an arbitration panel and get the OPPORTUNITY to be heard and to have their short and long term interests satisfied.

Despite this trend, many say mediation is unnecessary, expensive, and unproductive - complaints based upon its non-binding nature and prior “bad” experiences with ineffective mediators. From my discussions with many satisfied participants and my own

work mediating cases, I have found that parties and counsel can and do benefit in many ways - even absent an immediate settlement - from mediating their reinsurance dispute.

To illustrate how this works, I will use the following facts from an actual reinsurance mediation I successfully conducted years ago. Certain details were changed, and the names withheld, for confidentiality purposes.

Here are the facts: A retrocedent was seeking to collect \$5MM in reinsurance losses ceded to its retrocessionaire under a retro treaty. The losses derived from three reinsurance claims made against the retrocedent by a reinsurer. The three claims emerged from a large block of reinsurance business the reinsurer had originally reinsured for the Insurer, the quality of which the retrocedent had represented in placing information provided to the retrocessionaire when it had agreed to participate on the retro treaty. In its denial of the retroceded losses, the retrocessionaire raised errors in underwriting, delays in reporting and other issues arising in the underlying

block of assumed business. The parties agreed to mediate rather than arbitrate the dispute.

The Essence of the Mediation Process

In its classic form, mediation enlists an impartial, trusted facilitator to help parties explore, respect, and react to the narrow and broad objective, subjective and psychological factors creating conflict between them, promoting their ability to perceive and communicate positions leading to an inexpensive, voluntary resolution of the dispute on their own terms. The technical aspects of the specific factual and legal issues in dispute are not necessarily the most important elements of the process. In both joint meetings and private caucuses, parties (a) work with an experienced, professional mediator with no formal power to issue rulings (subject to parties’ modification), and (b) use an informal, confidential process (no rules of evidence or transcript) designed to suspend judgment and promote candor, (c) to identify and understand each side’s interests and goals underlying the actual dispute,

(d) ultimately giving them the power to control the terms of a mutually-acceptable settlement.

In this process, success is measured on various levels, in carefully timed, meaningful steps:

Step One: Before the actual mediation session, the mediator (a) obtains the parties’ mediation statements which contain documents and information revealing the salient facts and specific issues in dispute and (b) most importantly, works with them individually by phone or in person to help “set” the precise problems to be addressed which may go well beyond the narrow issues noted in their mediation statements. The importance of this step cannot be emphasized enough. If the mediator does their job, the parties and counsel walk into the mediation room understanding that the real problems may involve other factors, such as each side’s as yet undisclosed, underlying needs and interests.

In the case noted above, in addition to mediation statements, I asked the parties to provide only me with a Confidential Settlement Statement, designed to elicit (a) the history and end point of any prior settlement discussions (b) the underlying interests and needs they wished the mediation to address and (c) ideas for acceptable alternative paths to settlement. While the retrocedent basically discussed initial, acceptable percentage discounts to the \$5MM claim, the retrocessionaire requested that the mediation explore their concerns with the underlying assumed block of business (e.g., lack of underwriting, accommodation underwriting, sloppy claims handling).

Step Two: In an opening joint session (with all parties and their counsel present), the mediator sets the stage by convincing each party to actively listen to, understand, and acknowledge the other side’s arguments. Nodding your head is not enough. You must be able to repeat the other side’s position back and believably communicate your

appreciation and respect for such views even if you disagree with them. *This often overlooked but incredibly powerful step builds trust, breaks down barriers and actually makes the other side less defensive and more candid, giving you and the mediator valuable information to use in the mediation process;* information which, as noted in Step One above, helps define the proper depth and scope of issues the participants must address and resolve.

Step Three: After hearing the parties’ positions in joint session, the mediator meets separately with each side in private caucuses. Caucuses are used to

This is the heart of the process: an unscripted, evolving and changing dynamic which requires a perceptive, inventive, and focused mediator...

encourage parties to suspend judgment and accept an environment where they can comfortably and critically evaluate the strengths and weaknesses of their positions, creatively explore options to resolve their differences and ultimately use the mediator to develop proposals designed to get what they need, not what they want, from a mutually acceptable settlement.

In the first caucus, the retrocessionaire expanded the discussion beyond the three claims and expressed grave concern over deviations between the qualities of claims handling and underwriting performed in the assumed block and representations the retrocedent had made in the placing information. If the retrocedent did not acknowledge and attempt to address these problems, the retrocessionaire was prepared to “walk” from the \$5MM and file an arbitration demand seeking rescission.

Step Four: Applying the old adage that “diplomacy is the art of letting the other side have it your way,” the mediator slowly and deftly helps parties develop,

discuss, and respond to successive financial and non-financial proposals and counterproposals, each, if possible, supported by an articulated rationale, which satisfy both the offering party’s needs and the responding party’s interests. Simply put, party A must offer party B something that party A knows will help party B convince his company to accept the deal. *This is the heart of the process: an unscripted, evolving and changing dynamic which requires a perceptive, inventive, and focused mediator, patient, calm and committed parties, and an open exchange of ever-broadening proposals that accentuate agreement and eliminate disagreement.*

In our case, through several caucuses and carefully timed steps, I was able to have the parties understand and accept the following terms that addressed (a) the retrocessionaire’s need to identify and resolve potential problems with the assumed block, (b) the retrocedent’s need to maintain its ongoing relationship with the reinsurer on other business and to collect balances legitimately ceded under the retro treaty, and (c) their joint need to cooperate on steps designed to implement their settlement.

First, to provide information both parties needed to assess the legitimacy of claims ceded to the retro treaty, the retrocedent and retrocessionaire agreed to work together to design, conduct and share the expenses of an audit of the reinsurer’s questionable block of assumed business. Second, based upon the results of the audit, the retrocessionaire would pay all or any unchallenged portions of legitimate losses and, through the retrocedent, challenge any illegitimate cessions. Third, if the reinsurer rebuffs such challenges and institutes arbitration or legal collections proceedings, the retrocessionaire would pay 50% of any resultant legal and arbitrator expenses, legal fees and costs.

Having cooperated throughout this process, the parties were primed to return to productive discussions addressing the \$5MM claim. While

Dentons is pleased to support AIRROC through our membership, participation and active engagement with the insurance runoff community. On behalf of all our lawyers and professionals, we wish everyone in the AIRROC community a happy, healthy and productive 2023.

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Benefits of Reinsurance Mediation (continued)

their cooperative mood allowed them to identify, discuss and produce documents to narrow the substantive issues and financial gap between them, certain process adjustments noted below were necessary to achieve a final settlement.

Bridging the Gap

Often, despite everyone's best efforts, a financial or non-financial gap leaves parties with a choice between an agreed settlement and a disappointing walk from the table. Here, the mediator must maintain a positive, trusting relationship with the parties and continue moving the parties to propose alternatives and reframe the problem. They must keep parties focused on re-evaluating barriers between them and brainstorming ways to eliminate them. Often, new alternatives uncover new forms of "value" that lead to acceptable compromises and settlement.

In our case, two of the three retroceded claims made up most of the \$5MM. In the original joint session, the retrocessionaire had alleged improper, accommodation underwriting. Since the parties' prior achievements had built a spirit of cooperation and trust, the retrocedent agreed to immediately retrieve from both its and the reinsurer's files additional underwriting and claims records which were shared with both me and the retrocessionaire. Through additional caucuses, I helped the parties and counsel translate the substantive assessment of such records into rational, realistic, and reasonable adjustments to the \$5MM claim, narrowing the once "\$5MM vs. rescission" gap to within \$500,000.

Even if a financial gap remains, the mediator can propose final alternatives. Here are a few examples:

(a) First, if a financial gap remains, the mediator can ask the parties if they wish to privately give their best, final good faith offer and further agree that (i) if the numbers overlap, the mediator can split the difference within the overlap and announce a settlement; or (ii) if the numbers do not overlap, the mediator can split the remaining gap between them and announce a settlement; or

(iii) if the parties like (ii) but fear the gap might be too large, they may set a smaller dollar limit on the gap within which the parties' last, best offers must fall and agree that, if they do, the mediator may split the difference and announce a settlement. Under all scenarios, if no settlement is reached, the mediator does not disclose the offers to the parties.

In our case, the parties agreed to option (iii) and gave me their last, best offers which fell within the narrowed gap, allowing me to split the difference and announce a final settlement.

Since this process often lasts one or two days, its benefits are obvious, even if parties fail to reach agreement.

(b) Second, the mediator can ask if the parties wish for the mediator to "cross the line" and, in separate caucuses, provide their opinion on their case. Often, especially after hours of mediation, parties desire finality and, if they trust the mediator, they welcome their opinion to help them mediate across the final gap.

(c) Third, in lieu of (b), the mediator can ask if the parties wish them to become an arbitrator and decide the dispute based upon the briefs, exhibits and parties' positions disclosed during the mediation. The difference between (b) and (c) is that in (b), the parties still must mediate to a settlement and can walk away whereas, in (c), the mediator now arbitrator issues a final and binding decision.

The Results of the Process

Since this process often lasts one or two days, its benefits are obvious, even if parties fail to reach agreement. Without the aggravation, time and expense of lengthy discovery, pleadings, motions practice and legal and consulting fees, parties can work with a mediator experienced in the complexities and subtleties of reinsurance to:

- (a) gain an informed, enlightened perspective on both their and their opponent's cases;
- (b) acquire insights into the strengths and weaknesses of their substantive positions and the goals and interests of the other side;
- (c) test each other's desire to settle and measure the qualitative and quantitative gaps between their "bottom lines;"
- (d) hear from and test the credibility of the other side's key witness in preparation for subsequent proceedings; and
- (e) set the stage to comfortably resume settlement discussions later if and when discovery enhances or erodes their respective positions. Statistically, parties who mediate, even unsuccessfully, have a greater chance of settling cases earlier, more knowledgeably and less expensively than those who do not.

Conclusion

For certain reinsurance disputes, the mediation process allows parties to maintain relationships, reduce hostilities, avoid unpredictable panel or court decisions, assert more control over the terms of their settlements and lower litigation costs. In a world dominated by increasing numbers of arbitrated disputes, mediation is certainly a viable, beneficial option. ●

This article was adapted from the June 11, 2008 Harris Martin Reinsurance and Arbitration Journal, ©2008, Peter A. Scarpato, pscarpato@gmail.com



Peter Scarpato, Arbitrator, Mediator, Negotiations Consultant; 215-378-8766; pscarpato@gmail.com; 40 yrs. experience in all forms of dispute resolution as arbitrator, mediator, and negotiator in insurance, reinsurance and contract disputes.



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Legacy Transactions & Networking Forum
October 16 -18, 2022

AIRROC celebrates the success of the 18th Annual Legacy Transactions & Networking Forum. "Legacy Shines Bright" was the theme as the AIRROC community once again gathered in Jersey City, New Jersey, steps from the Hudson River and breathtaking views of the Manhattan skyline, to hold the premiere legacy industry conference. The event was a huge success that attracted over 200 in-person delegates and many more that attended the Education Sessions via live stream. Travel is back and this year we saw the return of many of our European colleagues. Reuniting and reconnecting with colleagues, clients, counterparties, peers and friends truly establishes that we are better together!

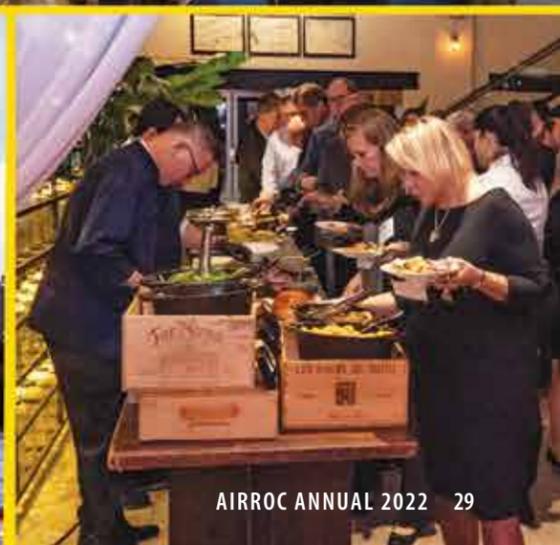
Bright smiles were plentiful, and we share many delightful moments that were captured on these pages.

We greatly appreciate the support from the AIRROC community and thank everyone who attended



photos / Jean-Marc Grambert







(left to right) Nate Zwick, Grant Donkervoet, Katie Reynolds, Sunny Liu, Natalie Weedman, Jessica Groenewegen

New Faces Going Places

NextGen Council Corner: 2022 Year In Review

2022 Recap

As 2022 came to a close, it marked another successful year for NextGen. As an organization, it evolved from a Task Force to Council and welcomed new Council members. As Council, it advises and supports the governance work of the AIRROC Board to help guide the organization toward its stated mission. Also noteworthy for 2022, NextGen met in-person as a group for the first time during AIRROC's October Forum after almost two years of virtual meetings. Thanks to nominations from AIRROC members as well as connections made with prospective members during the October Forum, the Council will be expanding its committees in 2023.

Under the leadership of the NextGen Education Committee, Council members participated in six AIRROC education events this year. The group contributed to discussions ranging from claims trends, transaction structures and characteristics, negotiations and alternative dispute resolutions, to attracting and retaining NextGen talent. In addition, our favorite podcast, AIRROC's "The Legacy Life," released two seasons of great conversations with seasoned industry leaders as well as rising stars in the legacy space. The 20 episodes from seasons two and three reached 2,400 downloads and a global audience. Special thanks to Katie Reynolds, and AIRROC, and all the guests who joined us for making the podcast possible.

The Digital Content Committee of the NextGen Council more than tripled its followers and connections on LinkedIn in 2022. The committee was also very active in producing a regular feature in the AIRROC Update newsletter by contributing seven articles, which was also used as original content to boost NextGen's social media presence. What's more, they led the outreach to past AIRROC Scholarship winners to generate a "Where are They Now" story. More to come in 2023!

Under the guidance of the Awards Committee, NextGen Council made a concerted effort this year to broaden the geographic outreach of AIRROC's Trish Getty Scholarship. Through this effort, new relationships with universities and programs were established, which will benefit the next generation talent pipeline for the legacy space. The NextGen Council supported application reviews and presented the award at AIRROC's October Forum. Check out the article in this magazine and on the AIRROC website regarding the 2022 scholarship recipient, Lori-Ann Knight.

How to get involved

There are a variety of ways to get involved with NextGen. Whether you thrive on coordinating big, long-term projects or you only have a few minutes to give, there are opportunities for you.

NextGen Council: This is the governing body of NextGen. Council members oversee NextGen committees and their initiatives, liaise with the AIRROC Board and AIRROC committees, communicate AIRROC's mission and vision to the industry and attend AIRROC events.

NextGen Committees: These offer a variety of opportunities and varying levels of commitment, and involvement is what

you make of it. If you are only looking for a small job, you might consider joining any of the brainstorming sessions once or twice a year. If you would like more involvement, you might consider planning an event, speaking on a panel or writing an article for the newsletter. Committees include awards, digital content, education, and social. Learn more about what they do and complete our committee interest form [HERE](#).



We are always looking for new ideas and new members, and we would love to hear from you.

NextGen Members: You don't have to be on the Council or on a committee to get involved. You can support NextGen by attending our educational and social events, engaging with us on social media, listening to our podcast or by telling your colleagues about the work we do.

The NextGen Experience

To better understand the roles, responsibilities and benefits of participating on the NextGen Council, we posed some questions to Council members, and this is what they had to say:

Katie Reynolds
Reinsurance Specialist, The Hartford

Q. How would you describe the benefits of being a member of the NextGen group to a prospective member?

A. It's all what you make of it, but looking at my own experience, I've met great people, developed new skills, practiced my public speaking, had opportunities to travel and actually gained invaluable knowledge about the reinsurance and legacy industry.

Q. What has been your greatest contribution or achievement, individually or as a group, to help the NextGen group meet its goals?

A. I love NextGen, and I do a lot in my role on the Council, but honestly, I think just getting out there and being a spokesperson for the group has been my greatest contribution over the last few years. If people don't know we exist or aren't excited to join us, then we can't grow and we won't survive.

Q. What skills have you developed or honed as a result of your involvement with the NextGen group?

A. I learned how to produce a podcast! Who would have thought? One of the things I love about NextGen is that the group is always open to new ideas and is happy to let its members run with projects.

Jessica Groenewegen
Associate Legacy Broker, TigerRisk Partners

Q. How would you describe the benefits of being a member of the NextGen group to a prospective member?

A. In addition to the education events, one of the main benefits is the networking opportunities provided. Being in the NextGen group allows you to connect with key professionals in the legacy industry and the opportunity to attend large events hosted by AIRROC. During the last two years, I have spent a lot of time working with the other members of this Task Force and consider them to be friends. We have a lot of fun spreading awareness for the legacy space and are afforded several speaking and educational opportunities whether that is participating on a panel at AIRROC's events or hosting webinar events on "Legacy 101" topics.

Q. What has been your greatest contribution or achievement, individually or as a group, to help the NextGen group meet its goals?

A. For me, the best achievement has been presenting on several different

panels to the entire AIRROC group. Most AIRROC events are well attended by key people in the industry and it's great to have that exposure at such an early point in my career. I presented on different generations views of working from home and then again at the CAS seminar, both were because of my involvement with the NextGen group.

Sunny Liu
Senior Portfolio Actuary, Swiss Re

Q. Has your involvement with AIRROC NextGen helped advance your career and if so, how?

A. Yes, it gave me opportunities to be more involved with the industry and build connections outside of work.

Q. How would you describe the benefits of being a member of the NextGen group to a prospective member?

A. NextGen is a great platform for young professionals in the legacy space to be seen. AIRROC provides many valuable opportunities during the year for the group to participate in panel discussions. Connecting with fellow panelists/speakers by working on something together makes a connection stronger. In addition, NextGen really is a group of outstanding young professionals. I really enjoyed working with the group.

Q. What has been your greatest contribution or achievement, individually or as a group, to help the NextGen group meet its goals?

A. For me, documenting NextGen's achievements through newsletters and sharing them via AIRROC Update and social media is the biggest contribution. I've also participated in panel discussions to show the legacy space is more creative and vibrant than what the name may imply, which serves to attract more young professionals to the industry.

Q. What skills have you developed or honed as a result of your involvement with the NextGen group?

A. I have many first-time experiences as a member — first time participating

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NextGen (continued)

in a panel discussion, first time managing a social media account, first time writing for a newsletter, and first time leading a committee to contribute to a great cause. Being a part of NextGen helped me develop leadership and communication skills.

Grant Donkervoet
P&C Analytics Lead, Swiss Re P&C Solutions

Q. How would you describe the benefits of being a member of the NextGen group to a prospective member?

A. Top benefits include building great professional and personal relationships, helping shape the future of the industry, and developing deeper subject knowledge.

Q. What has been your greatest contribution or achievement, individually or as a group, to help the NextGen group meet its goals?

A. I've been involved in the scholarship process in the last 2 years and I really enjoyed learning about all the great young potential coming into the industry. It's a joy to provide assistance to amazing students interested in the insurance industry.

Q. What skills have you developed or honed as a result of your involvement with the NextGen group?

A. I've definitely been able to refine my skills around project management, team coordination, public speaking, communications, and networking.

Matthew DiSanto
Associate Director Capital Advisory at Aon

Q. Has your involvement with AIRROC NextGen helped advance your career and if so, how?

A. The NextGen has been vital to advancing my career, as it has given me a platform to network professionally with Legacy professionals of my generation as well current leaders in the industry. This in return has been invaluable for facilitating transactions in the U.S.



Q. How would you describe the benefits of being a member of the NextGen group to a prospective member?

A. Having access to senior leadership in the legacy industry compounds throughout most parts of my professional career.

The NextGen has been vital to advancing my career, as it has given me a platform to network professionally with Legacy professionals of my generation as well current leaders in the industry. — Matthew DiSanto

Q. What has been your greatest contribution or achievement, individually or as a group, to help the NextGen group meet its goals?

A. Presenting the scholarship and moderating AIRROC webinars has been more than a positive experience.

Q. What skills have you developed or honed as a result of your involvement with the NextGen group?

A. I now have a much greater understanding of the legacy market and current conditions.

Nate Zwick
Assumed Claims Manager at The Hartford

Q. Has your involvement with AIRROC NextGen helped advance your career and if so, how?

A. Absolutely – it's helped me increase my profile within the industry by offering public speaking opportunities and exposure to key individuals.

Q. How would you describe the benefits of being a member of the NextGen group to a prospective member?

A. Having the ability to sit on boards and committees with some of the leading individuals in the industry is invaluable; you gain exposure and networking opportunities that would otherwise be very hard to come by.

Q. What has been your greatest contribution or achievement, individually or as a group, to help the NextGen group meet its goals?

A. I think collectively we have absolutely been able to increase awareness of AIRROC to a newer, younger generation of legacy professionals. Whether through the annual scholarship, the numerous education events we helped plan, or the extremely successful legacy podcast – the team has collectively brought fresh new ideas to the organization and positioned it well to attract new, talented individuals in the future.

Q. What skills have you developed or honed as a result of your involvement with the NextGen group?

A. I have certainly improved my ability to speak publicly, especially in front of senior leadership, and I also feel that my networking skills have improved. ●



Simin (Sunny) Liu is a member of the AIRROC NextGen Council. She is a Senior Portfolio Actuary at Swiss Re, and a Fellow of Casualty Actuarial Society (FCAS). nextgentf.airroc@gmail.com.

Dancing to the Beat of Divisive Mergers

The “Texas Two-Step” Bankruptcy Strategy

Named after the “most widely known and performed dance in North America,”¹ the “Texas Two-Step” bankruptcy strategy is itself becoming a more widely known and performed practice that has arisen as a check against liability exposures resulting from increasingly large jury awards. Although the name implies the strategy may only be applicable in Texas, many other states have similar statutory schemes favorable to the practice. Not without its controversies and criticisms, recent court decisions have affirmed the strategy, making it a viable option—and thus an important tool—for any attorney who counsels and advises clients facing enterprise-threatening exposures to mass tort liabilities or any other type of liability.

How to Dance the Texas Two-Step

Unsurprisingly, there are two steps to effectuate the Texas Two-Step. The first step: effectuate a divisive merger (if your state allows it).² A divisive merger allows a company to split into two or more companies. As part of this process, the original company’s liabilities and

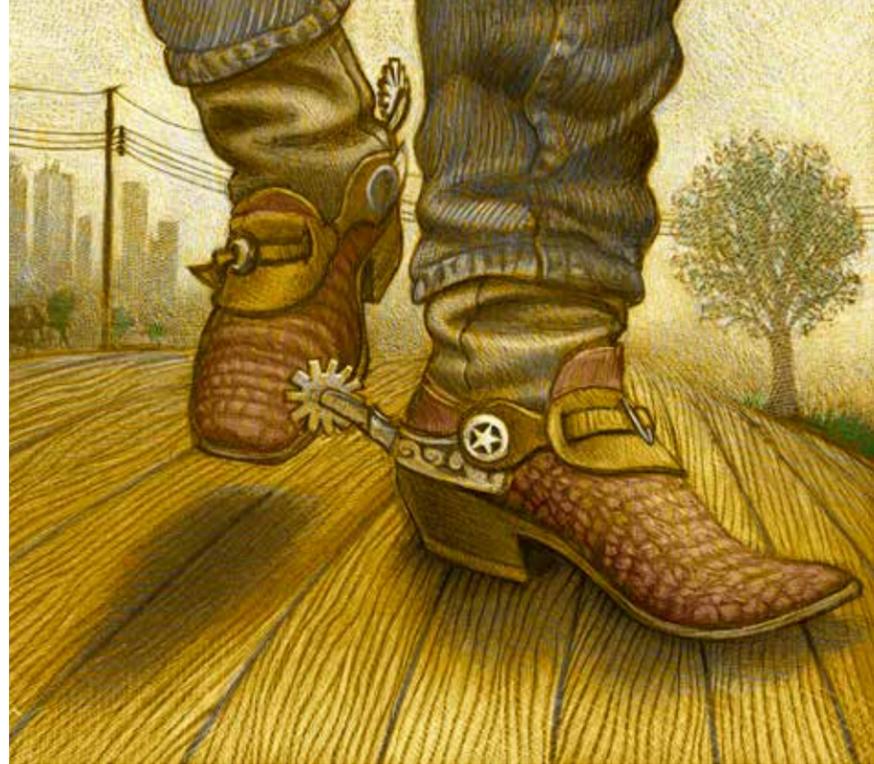


Illustration / Rafael Edwards

obligations must be allocated between it and any newly created companies; thus, the original company may transfer a relatively small portion of its assets to the new company—along with any and all tort liabilities the original company was facing. For example, Texas law requires a company that is effectuating a divisive merger to develop a plan of merger and file the associated filing with the Secretary of State.³ The plan merger must describe the “manner and basis of allocating and vesting” both the “property” and “each liability and obligation of each organization that is party to the merger,” or at least a description of the “payment and discharge of each liability and obligation.”⁴ Importantly, where the original company does not survive, and the plan of merger allocates a particular liability or obligation to a single new entity, that designated new entity is exclusively liable for that obligation.⁵ There is no residual exposure for the original entity, which has been dissolved, or for any other newly created entities, which will presumably continue the business of the company.

The second step: file for bankruptcy. The newly created company, now having certain defined assets against the subject liabilities, files for bankruptcy after the merger is completed, thus triggering all the associated protections under the Code, not least of which is the automatic

stay against all litigation. The remaining company, having transferred away the liabilities, can then potentially operate without fear of a massive judgment against it. Under bankruptcy law, the assets of the parent or non-debtor companies are generally shielded. Depending on the state, the new company is not completely off the hook, though. For example, Texas law requires that the merger plan contain “adequate provisions for discharge of liabilities.” Consequently, there is generally a creation of a funding agreement between the parent and subsidiary which aims not to diminish the recovery which the subsidiary’s creditors would have received had the divisive merger not occurred.

Attempts to Dance the Texas Two-Step

Johnson & Johnson Consumer Inc. (J&J) recently attempted this strategy in the face of mounting liabilities from claims alleging that its baby powder caused ovarian cancer and mesothelioma. In large part, it has been successful. Janssen Pharmaceuticals, J&J’s direct parent, used Texas’s divisive merger statute to create a new subsidiary that would assume responsibility for the talc-related liabilities and receive J&J’s rights under a funding agreement tied to the valuation of J&J involving a \$2 billion trust created to compensate talc claimants. The new subsidiary, LTL Management, LLC (boldly named after the litigation for which it

was created—Legacy Talc Litigation) filed for Chapter 11 relief in the United States Bankruptcy Court for the Western District of North Carolina two days after the merger. On a venue challenge, the case was subsequently transferred to the Bankruptcy Court for the District of New Jersey, where J&J has its headquarters and principal operations.

The talc claimants filed a motion to dismiss, arguing that the bankruptcy was filed for an improper purpose under Section 1112(b) of the Bankruptcy Code. They argued that J&J utilized the bankruptcy system in bad faith to shield itself from liability and cap recoveries by the claimants. They further argued that the merger was a sham transaction because there was no legitimate business purpose to LTL. Indeed, they pointed out that LTL had virtually no employees, no operations, lenders, bondholders, customers, suppliers or vendors, and was created solely for the purpose of delay and so that LTL could pay the mass tort claimants pennies on the dollar.

The New Jersey Bankruptcy Court rejected these arguments. The court refused to dismiss LTL’s Chapter 11 case, finding that it was not filed in bad faith, and that LTL was in compliance with Texas’s requirements for implementation of a divisive merger. The Court further determined, more broadly, that a Chapter 11 filing to address mass tort exposure is a valid purpose and is wholly consistent with the aims of the Bankruptcy Code.⁶

Although not receiving as much media attention, other attempts at utilizing this strategy have also been successful. Recently, Judge J. Craig Whitley of the U.S. Bankruptcy Court for the Western District of North Carolina enjoined two different asbestos victim groups from continuing lawsuits against non-debtor entities related to divisive mergers in separate bankruptcy proceedings.⁷

From an insurance perspective, the strategy presents unique considerations of equity and effectiveness that may drive a court’s approach to cases involving divisive mergers.

Both groups sought “substantive consolidation,” which would have merged the assets of the debtor and non-debtor entities, effectively nullifying the Texas Two-Step maneuver that the parent companies used. And subsequent to the oil price plummet in 2020, Fieldwood Energy, LLC—a company owning and operating over 300 oil and gas wells/platforms on over 1.5 million acres of land—filed bankruptcy in the Southern District of Texas, seeking a restructuring of its energy enterprise in the face of significant plugging and abandonment liabilities.⁸ Fieldwood employed the Texas divisive merger statute as a part of its bankruptcy plan to divide its assets, with its secured creditors purchasing the better assets through bankruptcy sales; it was able to get its Chapter 11 plan confirmed and exit bankruptcy using this strategy.

Insurance Considerations of the Texas Two-Step

From an insurance perspective, the strategy presents unique considerations of equity and effectiveness that may drive a court’s approach to cases involving divisive mergers. Often, the availability of insurance is a key component to the success of a business reorganization and will likely play a role in the bankruptcy of the new debtor entity created in a divisive merger as it could be one of the few assets available to the debtor’s creditors.

But this also leads to several issues of which a practitioner should be aware, the first of which is: who is the insured in the case of a divisive merger when the original

company had a general commercial liability policy? A classic, oft-used definition of the insured party that likely is not different from the average commercial liability policy defines the “named insured” as the organization, including any subsidiary thereof, named in [x] of the declarations and also includes any other company which is acquired or formed by the named insured during the policy period and over which the named insured maintains ownership or financial control. At least arguably, this covers all entities created as a result of a divisive merger; however, more recent policies tend to include subsidiaries in which the named insured “owns more than 50%.” Thus, whether a general commercial liability policy covers a newly created company as a result of a divisive merger likely will depend on the merger agreement and the specifics of that transaction.

Another issue is whether policies can be assigned by the original policyholder. Most courts hold that Sections 1123 (concerning a Chapter 11 bankruptcy plan) and 541(c) (concerning the assets in a bankruptcy estate) of the Bankruptcy Code supersede any anti-assignment language in an insurance policy, thereby opening the door for the original company to merely assign its rights to the policy to the created entity. Then again, that is only true if the transfer does not increase the insurer’s risk under the policy.

Another issue involves coverage disputes and where to litigate them. This involves questions of which court has jurisdiction over the dispute and whether the dispute is a “core proceeding” under the Bankruptcy Code. Most decisions find jurisdiction in bankruptcy court if the coverage is essential to reorganization, and in a “Texas Two-Step” bankruptcy, insurance coverage is likely to be deemed essential to the estate.⁹ Other courts, however, impose a more stringent definition of a “core” proceeding that

¹ Helene Scheff et al., *Exploring Dance Forms and Styles: A Guide to Concert, World, Social, and Historical Dance* 222 (2010).

² In addition to Texas, other states such as Pennsylvania, Arizona, and Delaware all allow for a company to perform a divisive merger.

³ See Tex. Bus. Orgs. Code Ann. §§ 10.001–02.

⁴ Id.

⁵ Id.

⁶ That decision is on direct appeal to the U.S. Court of Appeals for the Third Circuit. In re LTL Management LLC, Case No. 22-2003. Oral argument was held on September 19, 2022.

⁷ In re DBMP LLC, 20-30080, 2021 WL 3552350 (Bankr. W.D.N.C. Aug. 11, 2021); In re Aldrich Pump LLC, 20-30608 (JCW), 2021 WL 3729335 (Bankr. W.D.N.C. Aug.

23, 2021).

⁸ In re Fieldwood Energy LLC, 20-33948 (MI), 2021 WL 2853151, at *13 (Bankr. S.D. Tex. June 25, 2021).

⁹ See, e.g., In re Prudential Lines, Inc., 170 B.R. 222 (S.D.N.Y. 1994).

¹⁰ See, e.g., In re United States Brass Corp., 110 F.3d 1261 (7th Cir. 1997).

¹¹ Available at <https://www.cbo.gov/publication/58151>.



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Texas Two-Step Strategy (continued)

would tend to exclude the average coverage dispute.¹⁰

The application of a self-insured retention provision is also a complicated issue that frequently arises, involving a provision in a liability insurance policy specifying an amount that must be paid by the insured before the insurance policy responds to a covered loss. This an obvious problem to a newly created entity as a result of a divisive merger, which by design has little to no cash on hand to make such a payment. Most bankruptcy courts (though not all) have held that a failure to pay a self-insured retention does not void coverage, some holding that the SIR could be deducted from the payment made by the carrier. Further complicating matters, some courts have held that a carrier has no duty to defend against claims within the self-insured retention provision itself.

These are only a few of the insurance-related issues that can arise with respect to a divisive merger. The wary practitioner—on both the insurance coverage and

bankruptcy side—should be aware of any applicable duties to defend, exhaustion of underlying limits, drop down of excess coverage, and possible voiding of prior settlements or buybacks. In navigating these issues, insurers must be cognizant of the intricacies of bankruptcy law, particularly those that reflect the courts' origins as courts of equity.

Conclusion

Due to recent negative perceptions of the bankruptcy implications of divisive mergers (as well as third-party releases in bankruptcy), proposed legislation was introduced that would limit the practice. Entitled the "Nondebtor Release Prohibition Act," H.R. 4777, this bill would prohibit non-consensual third-party releases and require the dismissal of bankruptcy cases filed after the implementation of a divisive merger transaction where the entity has taken on liabilities within 10 years before filing.¹¹ As of yet, this proposed legislation has failed to find sufficient ground to leave the House. Consequently, the Texas

Two-Step strategy is likely to be around for some time and should be considered a tool in today's representation of companies facing increased numbers of tort (or other significant) claims. ●



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We are proud to be a Member of AIRROC and an Annual Corporate Partner. We value our continued partnerships in the New Year and wish everyone in the legacy claims community continued health and prosperity. We look forward to connecting at key industry events in 2023.

For more information and to meet at industry events in 2023, reach out to our team:
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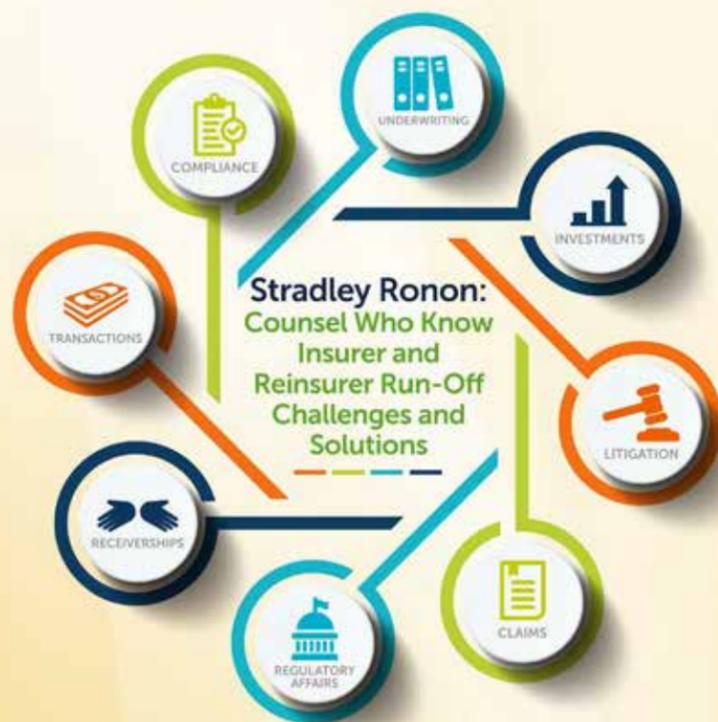
2022 AIRROC Education Sessions – all on AIRROC On Demand!

In 2022 AIRROC hosted 3 hybrid events and 7 webinars – the content was recorded and 21 new sessions were added to our on demand library for access by AIRROC members.

There are now 63 individual courses that can be accessed that are searchable by 18 different topic tags.

2022 AIRROC Events

- Claims Trends Webinar: Abuse and Sports Head Injuries (1.26.22)
- PFAS Webinar (2.22.22)
- Spring Membership Hybrid Event (3.29-30.22)
- Climate Change: The Next Industry Challenge Webinar (4.27.22)
- Basics of Legacy Transactions: IBTs Webinar (5.1.22)
- 3D ADR Webinar (5.18.22)
- Virtual Negotiation Workshop (6.2.22)
- Summer Membership Hybrid Event (7.20-21.22)
- Claims Trends Webinar: Flammable Cladding and Construction Defect (10.5.22)
- NJ Forum Virtual and Live Event (10.16-18.22)



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