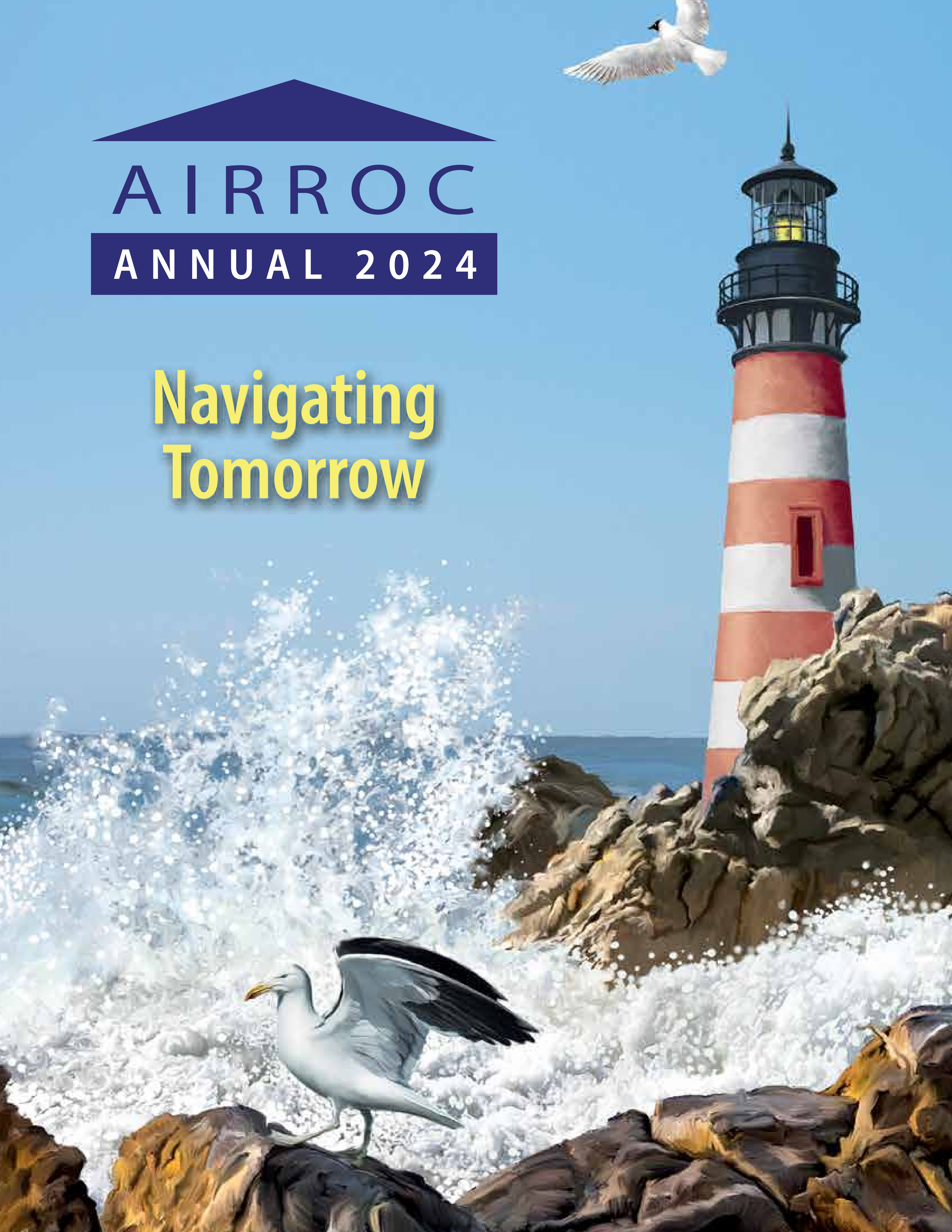
AIRROC

ANNUAL 2024

Navigating Tomorrow



A Beacon of Light

Carolyn Fahey

AIRROC Annual 2024

illustration / Rafael Edwards

Lighthouses don't go running all over an island looking for boats to save; they just stand there shining.

Anne Lamott

Welcome to the *AIRROC Annual 2024* – a recap of another fantastic year for AIRROC. Our theme "Navigating Tomorrow" illustrates AIRROC's key role in serving as a guiding force in the legacy community as our sector continues to grow and become more relevant to the active market. Legacy solutions offer creativity and concrete ways to assist with the ever-changing demands of the consumer to cover risks.

Why the stunning image of a labrador retriever on this page? You may recall that when we published the *AIRROC Matters* magazine (precursor to *AIRROC Update*), I would choose an animal for each of my introductory columns that matched the theme and I have continued that tradition with our *Annual*. This time I chose a labrador and it is the first time a domestic animal is being showcased! An animal associated with a lighthouse is the keeper's dog, which is often the only companion for someone in a job that could be very isolating. They are loyal, steadfast and able to leap into action very quickly, a bit like I envision AIRROC serving our members and the legacy community.

AIRROC had a successful 2024 – hitting our stride with our schedule falling into familiar and much anticipated patterns. Our Runoff Deal Market Forum kicked off the year, the Spring and Summer membership meetings saw record crowds, the Chicago and London events brought our highly rated education to other cities, and our second reception at the Monte Carlo Rendez-Vous de Septembre continued to show the live market how the legacy community shines.

Throughout the year I travelled to Orlando, Ashville, Savannah, Phoenix, Oklahoma City and Nashville to speak at events hosted by other organizations to educate about our increasingly important sector. Collaborating with other organizations and representing legacy continues to be an important goal for AIRROC. In 2024, we conferred a record number of Certified Legacy Professional (CLP) designations, and our Regulatory Committee was both energized and active, commenting on several items at the NAIC and with Bermuda regulators. More detail on all of this can be found in my article entitled "Lighting the Way" in this issue.

Collaborating with other organizations and representing legacy continues to be an important goal for AIRROC.

I am very blessed to work with our talented and supportive Board of Directors, Advisory Council and NextGen Council. With a keen eye to the future, all three groups met in July for a full day strategic planning session. We did this because we must always be looking ahead so we can continue to meet the needs of our market.

In this *Annual*, we offer original articles, perspectives, photos, and more – each piece a celebration of who we are: AIRROC, a legacy community of members and partners, and many exceptional people who support our initiatives.

Brendan McQuiggan and Katie Reynolds, board members and chairs of the Digital Content Committee, pen the introduction. Also within these pages you will find articles featuring highlights such as the Person of the Year, the 13th Trish Getty Scholarship winner, the two recipients of the NextGen Leadership award, an interesting read on novations, and insights on PFAS.

Of course, we include a beautiful photo montage of attendees at our biggest event of the year – the Legacy Transactions & Networking Forum – as our community once again gathered in Jersey City, New Jersey.

As we look to celebrate AIRROC's 20th anniversary year in 2025, we continue to act as a guiding light for legacy and to shine on and on and on... ●

With Warmest Regards,

Carolyn Fahey
Executive Director

Carolyn Fahey has served as AIRROC's Executive Director for thirteen years. She is the face of the organization and the voice of the U.S. legacy sector. As an acclaimed speaker, author and educator, she enthusiastically leads with her hands-on, high-energy and innovative approaches that have built AIRROC into the preeminent organization for runoff professionals. 703-740-7527. carolyn@airroc.org

AIRROC
ANNUAL 2024

A Beacon of Light 3
AIRROC Annual 2024
Carolyn Fahey

Full Steam Ahead 6
The *AIRROC Annual* Quattro
Brendan McQuiggan and Katie Reynolds

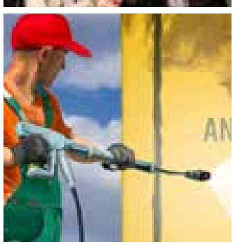
AIRROC 2024 Accomplishments by the Numbers 6

Expanding Conversations 9
AIRROC 2024 Person the Year, Marty Rosemann
Connie O'Mara

Lighting the Way 13
2024 and Beyond: Mapping Out Our Future
Carolyn Fahey

NextGen Duo Leads the Way 16
AIRROC Reveals 2024 NextGen Leadership Award Winners
Katie Reynolds

Balance Sheet "Retrofix" 17
The Rating Agency Benefits of Retrospective Reinsurance Transactions
Matthew Dachowski



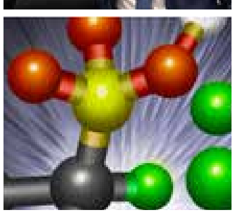
Thanks to our Corporate Partners 19

The Rise of Novations 20
The Smart of the Deal
Jose Martinez

Ardent Ardit Accepts Award 25
Ardit Kerimi Awarded the 2024 Trish Getty Scholarship
Kristen Kish

A Guiding Light for Legacy 27
Photo Montage of Legacy Transactions & Networking Forum

Building Bridges in Legacy 32
The Value of the Certified Legacy Professional (CLP) Designation
Michael R. Terelmes



NextGen Aces Activities 34
NextGen Council Corner: 2024 Year in Review
David Silvers

Life in the PFAST Lane 36
Initial PFAS Claim Considerations
Erika M. Lopes-McLeman and Jim McGann

AIRROC Digital Content Manager
Maryann Taylor
airrocmatters@airroc.com

Design & Illustration
Myers Creative Services
Nicole Myers
nicole@myerscreative.net
illustrations: Rafael Edwards

Copy Editing
Gina Pirozzi
gina@gpirozzi.com

Photography
Jean-Marc Grambert
marc.grambert@gmail.com

Full Steam Ahead

The *AIRROC Annual* Quattro

Welcome to the 2024 edition of the AIRROC Annual*! In our fourth year of publication, the Digital Content Committee is once again excited to provide a collection of some of the best content from the monthly* AIRROC Update *newsletters as well as new articles. We share highlights from the October conference in Jersey City, and preview some of the exciting changes coming in 2025—AIRROC's 20th anniversary year.*

Our goal, as always, is to demonstrate the many ways the organization continues to fulfill its vision "to be the most valued (re)insurance industry educator and network provider for issue resolution and creation of optimal exit strategies" – and its mission "to promote and represent the interests of entities with legacy business by improving industry standards and enhancing knowledge and communications within and outside of the (re)insurance industry."

2024 was an important year for the legacy market. Regular readers of the *AIRROC Update* as well as those attending the Summer meeting in July, will recall the PwC Global Insurance Run-Off Survey that found 2024 was the first year that worldwide non-life legacy reserves were estimated to exceed $1 trillion. Per PwC's February 2024 survey results, the legacy space has long since shed its reputation as a niche market for the liquidation of aging asbestos and environmental liabilities. Today's legacy stakeholders have built a vital marketplace with diverse objectives: Legacy at its heart offers flexibility and creativity to help companies efficiently deploy capital. A dynamic and growing marketplace means new opportunities for companies who can chart the right course. With this in mind, the committee has selected "Navigating Tomorrow" as the theme of this year's *Annual*, repurposing the lighthouse motif from the October event (theme: a Guiding Light for Legacy). Here, the lighthouse represents the role our organization has played as a navigational beacon, revealing a path forward through uncertainty, drawing together like-minded organizations and executives, and serving as a signal for new entrants and young professionals that there is a vital space here towards which they should set their sails.

Our latest issue has plenty of illuminating content. Inside you'll find original pieces describing Swiss Re's views on the market and the increasing use of novations, Guy Carpenter's take on the benefits of retrospective

AIRROC 2024 Accomplishments by the Numbers

- **Hosted 7 events** (in person and live streamed) with a total of 29 different education sessions.
- **Continued to expand** the number of individuals that earned the Certified Legacy Professional (CLP) designation. Twelve individuals were conferred with the CLP in 2024, which doubles the number who have this unique qualification.
- **Education on legacy** to the World Captive Forum, the North Carolina Captive Forum, the Society of Financial Examiners, the ReUnder 40's Summer Intern Summit, the Tennessee Captive Forum, and the NAIC. We had a featured article in the Captive Insurance Times, and Carolyn Fahey was a guest on the "Mulready Minutes" podcast with the Commissioner of Oklahoma.
- **The Regulatory Committee submitted comments** and testified for the NAIC Restructuring Working Group. The committee is made up of members who work collectively to educate on legacy at the NAIC, state insurance departments and other regulatory bodies.
- **Continued to add content to AIRROC On Demand.** There are 108 video sessions in our growing library that can be accessed at any time by AIRROC members. We added 22 new modules in 2024 and there are nearly 20 different searchable subject categories, which are all great resources for our members.
- **Published 99 new articles in *AIRROC Update*** with the website being accessed more than 9,000 times. Of the users to our site nearly 3,000 were new visitors from an organic search seeking our resources.

illustration / Rafael Edwards

Brendan McQuiggan and Katie Reynolds

AIRROC has come a long way in the last 20 years, and has emerged as a leading voice of the run-off industry in the United States.

reinsurance transactions and Dentons' view on coverage considerations for PFAS claims. We are sharing a sneak peak of some of the changes coming in 2025 through our review of the strategic planning session in Carolyn Fahey's piece "Lighting the Way." Finally, we celebrate the 2024 award winners and the latest class of Certified Legacy Professionals.

AIRROC has come a long way in the last 20 years, and has emerged as a leading voice of the run-off industry in the United States. Our membership meetings are a fixture on the calendar of important players in the legacy and insolvency market.

We have developed market-leading educational resources, most of which are now available digitally. We have designed and recently revitalized an alternative dispute procedure, and created an in-house certification that is gaining recognition and currency in many legacy claim and finance organizations. We look forward to celebrating our bright future in the upcoming anniversary year.

As always, the Digital Content committee chairs are deeply grateful for the year-round work and support of our members, in particular Connie O'Mara, Peter Scarpato and Abby Holmes. This magazine also could not be published without the dedication and effort of Digital Content Manager Maryann Taylor, Executive Director Carolyn Fahey, the creative services of Nicole Myers, copy editor Gina Pirozzi, and artist Rafael Edwards.

Thank you, all.

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 portfolio.

Katie Reynolds is a Reinsurance Specialist with The Hartford, handling legacy assumed reinsurance claims.

We produced 9 *AIRROC Update* e-newsletters and the 2023 *AIRROC Annual* in both a hard copy and an electronic version.

- **Added 5 new individuals to our NextGen Council,** a group of young professionals tasked with helping to connect and engage the next generation of legacy leaders.
- **NextGen Council co-hosted a summer intern event** with the ReUnder 40's and had nearly 100 student interns in attendance.
- **Welcomed 10 new members:** Augment Risk, Clifford Chance, Global Re Group, Great American Insurance Group, Hannover Re, EMC Re, Nationwide, RiverStone International, Troutman Pepper and Willkie Farr & Gallagher LLP.
- **Registered a total of 1,150 participants** for AIRROC's 2024 programs with a consistent level of at least 80% of our registrants being members.
- **"The Legacy Life" podcast has continued to gain traction** with listeners and has been active for three years. We have nearly 4,000 downloads and 26 episodes available.
- **AIRROC's annual October Transactions Forum was a huge success** with more than 245 attendees in person and 35 virtually. Survey results show that nearly half of the delegates met with 10 or more companies; and the other half met with at up to 7 different companies. The overall number of delegates has increased 65% since 2021. AIRROC's importance as a business platform continues to shine!

illustration / Rafael Edwards

Expanding Conversations

AIRROC 2024 Person of the Year, Marty Rosemann

Connie O'Mara

"To give the short version, I've learnt that every human being, with or without disabilities, needs to strive to do their best, and by striving for happiness you will arrive at happiness. For us, you see, having autism is normal—so we can't know for sure what your 'normal' is even like. But so long as we can learn to love ourselves, I'm not sure how much it matters whether we're normal or autistic."

Naoki Higashida, *The Reason I Jump: The Inner Voice of a Thirteen-Year-Old Boy with Autism*

Marty Rosemann was driving back from Cape Girardau, Missouri after trying a case for the second time and thought to himself: "Being a defense lawyer is a hard way to make a living. The commodity I was selling—my time— was the one thing I wanted more of for myself."

Happily, he had an option; he was recruited to join Employers' Re. Since then, he has had a career that has literally caused him to note to himself numerous times that he "is not in Kansas anymore" because it has taken him and his family across the pond and back and all over the world. What might have seemed like a counterintuitive choice at the time has turned into a rewarding career that has made him happy.

His experience with the legacy space began in 2010 after transitioning from the London Head of Claims role at Swiss Re to the company's fledgling External Run Off unit and he discovered a job he loves. He believes that creativity and innovation are critical to finding more than one solution to a client's problem and enjoys the challenge of working with people to understand their perspective and needs. When people are not polarized and are able to work through counterarguments, the answer is often in the middle. He believes this willingness to understand the critical needs of a client and work on creative solutions together is a key attribute for anyone working in the insurance business, and particularly in the legacy market. He also believes that professionals need to have an appetite for learning that never stops and a willingness to work with all of the professionals in an organization to understand their disciplines and ideas in order to craft the best results. His least favorite quote is "If it ain't broke, don't fix it" because he believes this is the antithesis of continued learning and improvement.

Marty has been involved in AIRROC long enough to see it evolve from the era when it was primarily a commutation forum where parties could get deals done to its present-day mission of growth and opportunities for expanded conversations. It now includes a marketplace for many different transactions, products, and solutions so that parties can have more wholistic conversations to deal with financial goals.

Marty has been involved in AIRROC long enough to see it evolve from the era when it was primarily a commutation forum where parties could get deals done to its present-day mission of growth and opportunities for expanded conversations.

He believes events such as "The Runoff Deal Forum" educate the attendees in options, tools, and ideas that evolve into creative financial solutions.

On a personal note, Marty's favorite book is *The Reason I Jump: The Inner Voice of a Thirteen-Year-Old Boy with Autism* by

Naoki Higashida. Marty's eldest son is autistic, and this book has helped him understand the challenges of being autistic. But, perhaps, more fundamentally, it teaches the value of truly understanding a completely different perspective on living life with different challenges. The book is the gift of insight.

Marty is also a big fan of science fiction and fantasy, (much to his wife's dismay), and a History Channel devotee.

Marty Rosemann brought his family to the award presentation where he accepted the AIRROC 2024 Person of the Year award and made everyone there feel like family. Laughter and tears mixed with appreciation for the long list of past honorees made the assembled members and sponsors feel like a community that supports one another while working through disputes and business issues. It is a community of people doing their best. ●

Photos
(top) Marty Rosemann acceptance speech
(left top) Carolyn Fahey and Marty Rosemann
(left bottom) Marty Rosemann and Family
(bottom) Marty Rosemann and Swiss Re team

Connie O'Mara, member, AIRROC Advisory Council, AAA neutral, and ARIAS certified Arbitrator. She mediates insurance/reinsurance disputes and serves as an expert witness. Her bio is on the AIRROC website, Arbitrator & Mediator list. 609-502-8607, connie@cdomaraconsulting.com

(left to right) First row: Marianne Petillo, Dawn Ballin, Tom Mendralla, Betsy Mitchell. Second row: Stewart Richmond, Katie Reynolds, Mychal Loney, Megan McHugh, Carolyn Fahey, Sally Redd, Mike Terelmes, Judy Harnadek, Brendan McQuiggan, Steven Goate.

Lighting the Way

Carolyn Fahey

2024 and Beyond: Mapping Out Our Future

AIRROC will hit a big milestone in 2025. Cheers to 20 years! Over the years, we have grown from a modest startup group of runoff entities to a prominent force in the legacy industry.

We are incredibly grateful to our loyal members, dedicated Board of Directors, supportive Corporate Partners, and Advisory and NextGen Councils who have been integral to our success throughout this remarkable journey. We couldn't be more excited for 2025 and will be launching special events to honor the big anniversary throughout the year. But first let us remember that a lot has happened in 2024.

In July, we reported that we commenced a strategic planning process, retaining Wendy Scott & Associates to lead and facilitate the development of a plan to shape the next chapter of AIRROC. Without a clearly defined strategic foundation, we cannot advance AIRROC's values or carry out our mission.

There were compelling reasons why we initiated another strategic planning project. One was because it had been eight years since we worked with an outside facilitator so we were due. Plus, most of the prior goals had been achieved such as continuing to innovate for the future. Another reason for the project was because the volunteer leadership had changed multiple times and it was important for current leadership to have ownership of a revised plan. As well, the reinsurance/legacy industry has changed significantly over the past 10 years and AIRROC needs to continue to adapt and be prepared for these changes and unanticipated disruptions. Assessing the staffing needs and making sure that we have the resources to continue to provide excellence for our members was yet another reason for the project. We also wanted a more inclusive plan and approach that would expand participation to NextGen, Advisory Council, and Corporate Partners. And finally, AIRROC's further organizational development required a fresh look at vision, mission, core values, and strategic goals to support sustainability.

One-on-one and group interviews were conducted for feedback regarding perceived organizational strengths, areas for improvement, opportunities, mission, vision, and expectations for planning success. This was followed by a half-day in person session held the day before the Summer Membership Meeting with the facilitator, the Board of Directors, the Advisory and NextGen Councils, and key staff.

The purpose of these meetings was to focus on what should be our priorities in formulating a new plan that establishes a long-term vision to move forward. In depth analysis of key areas to focus on include staffing, regulatory, NextGen, education and governance. As we enter the first three years of this new plan, the leadership of the board will hold each other accountable to make sure the changes are implemented.

One of the discussion points was AIRROC's mission statement which says in part, to "promote and represent the interests of entities with legacy business by improving industry standards and enhancing knowledge and

communications within and outside of the (re)insurance industry." Although no changes to the mission statement were officially approved, there was consensus that editing is needed to accurately reflect changes in the industry and AIRROC's current status regarding the organization's "purpose for existing" and priority value proposition.

Other highlights in 2024 include the contributions made by our fairly new Regulatory committee that continues to pick up momentum and is pursuing critical initiatives for AIRROC. Chaired jointly by Robert Romano, Stewart Richmond and Betsy Mitchell, the committee meets regularly to respond to NAIC and other regulatory requests for comments, as well as to plan ahead for possible opportunities for us to engage with regulator audiences. As a non-profit association, AIRROC and its board do not advocate for any specific position but instead provide resources and information.

In July, the Regulatory committee submitted a comment letter to an Exposure Draft from the Restructuring Mechanisms Working Group. The NAIC released a summary of all comments received and AIRROC was featured prominently in these documents. A call of the Working Group was held on October 3 that I participated in and, on behalf of AIRROC, I was able to add verbal comments.

In August, AIRROC submitted a comment to an exposure from the Risk Surveillance Working Group to the Financial Analysis Handbook for Run-Off Insurers and the Financial Condition Examiners Handbook for Run-Off Insurers. The NAIC is taking notice of these messages and our comments.

One of our key goals is to develop international outreach initiatives designed to raise awareness and stature as we seek to expand AIRROC's reach and influence.

We have added a Restructuring Resources Guide to our website that contains source material on Insurance Legacy Transactions, Insurance Business Transfers (IBTs) and Corporate Divisions (CDs). The site contains NAIC source material and comments, including the comments submitted by AIRROC, relevant articles, a compendium of legacy related state laws and regulations, notable US precedent and legal actions and the docket of US IBT and CD proceedings. It is an invaluable reference tool for legacy professionals conveniently located in one place.

In August I attended and spoke at the Society of Financial Examiners (SOFE) technical development seminar in Oklahoma City and was a guest on the Oklahoma Commissioner's "Mulready Minutes" podcast. I also attended and exhibited at the NAIC in Chicago.

One of our key goals is to develop international outreach initiatives designed to raise awareness and stature as we seek to expand AIRROC's reach and influence. In furtherance of this aim, we traveled across the pond for our London education event, hosted by Kennedys in the Walkie-Talkie building. This is the fourth time we have held an AIRROC education day overseas. While there, I attended several of the pre-Monte Carlo events, and then on to Monte Carlo! Our third Monte Carlo presence was a whirlwind of meetings with potential members, expanding contacts with existing members and hosting our second AIRROC reception. The excitement around the event was contagious, and we received a lot of positive feedback regarding the importance of hosting a legacy event in Monte Carlo.

While we are in the initial stages of the strategic planning process, we will keep you posted on the progress of our endeavors as we hash out our priorities, goals and ambitions for the future.

Have ideas that you want to share? Let me know – the biggest success in this process will be working together to shape AIRROC for 20 more years and beyond!


One firm, endless possibilities
At Troutman Pepper Locke, we offer experience and practical, business-oriented legal guidance to insurance and reinsurance companies, insurance intermediaries, cedents, and service contract obligors and administrators. We offer innovative thinking in M&A and other transactions, regulatory compliance, insurtech, litigation, and arbitration. With deep industry experience and a highly skilled team, we effectively represent clients across all major industry segments.
troutman pepper locke
troutman.com

NextGen Duo Leads the Way

Katie Reynolds

AIRROC Reveals 2024 NextGen Leadership Award Winners

Carolyn Fahey and Layla Trummer

Natalie Weedman

Layla Trummer and Natalie Weedman were named co-recipients of this year's AIRROC NextGen Leadership Award at the 2024 AIRROC Legacy Transactions & Networking Forum.

Layla Trummer is a Senior Underwriter at Allianz Reinsurance America, Inc. She has been an active member of AIRROC NextGen for two years and currently serves as the Co-Chair of the NextGen Council. Within mere months of joining the NextGen Council, Layla represented NextGen on panels at AIRROC industry events. You can find her discussing the runoff industry and the nuts and bolts of legacy transactions on the AIRROC On Demand platform.

Natalie Weedman is a Senior In-force Management Expert at Swiss Re. She has been an active member of AIRROC NextGen for three years. From her position on the Digital Content committee, Natalie has led initiatives such as the "Where Are They Now" series on LinkedIn, which highlights former Trish Getty Scholarship winners and their career paths post-award. She also created the "NextGen Asks" video series on LinkedIn, which interviews run-off professionals about how they got their start in the legacy space. Natalie also serves as the Co-Chair of the NextGen Council.

AIRROC established the NextGen Leadership Award in 2023 to highlight NextGen leaders and honor their achievements.

Under their combined leadership, AIRROC NextGen has flourished. Some of NextGen's many accomplishments in 2024 include: welcoming five new members to the NextGen Council, participating in a strategic planning session with the AIRROC Board of Directors in July, sponsoring ReUnder 40's Intern Day where NextGen promoted legacy careers to over 100 college students, developing short-form content for their social media feed, and expanding the pool of potential applicants for the 2024 Trish Getty Scholarship.

AIRROC established the NextGen Leadership Award in 2023 to highlight NextGen leaders and honor their achievements. The 2024 honorees will each receive a $2000 stipend for professional development. Funding for the award was made possible with the generous support of Carrick Holdings and supplemented by AIRROC. The award was established in honor and memory of Terry Kelaher, a founding AIRROC board member.

AIRROC is honored to recognize Layla and Natalie for their accomplishments. We know AIRROC NextGen is in good hands and look forward to seeing where the group goes next. ●

Katie Reynolds is a Reinsurance Specialist with The Hartford, handling legacy assumed reinsurance claims.

Balance Sheet "Retrofix"

Matthew Dachowski

The Rating Agency Benefits of Retrospective Reinsurance Transactions

The insurance industry is no stranger to the benefits of retrospective reinsurance transactions, whether a legacy runoff transaction or a retroactive adverse development or loss portfolio transfer cover.

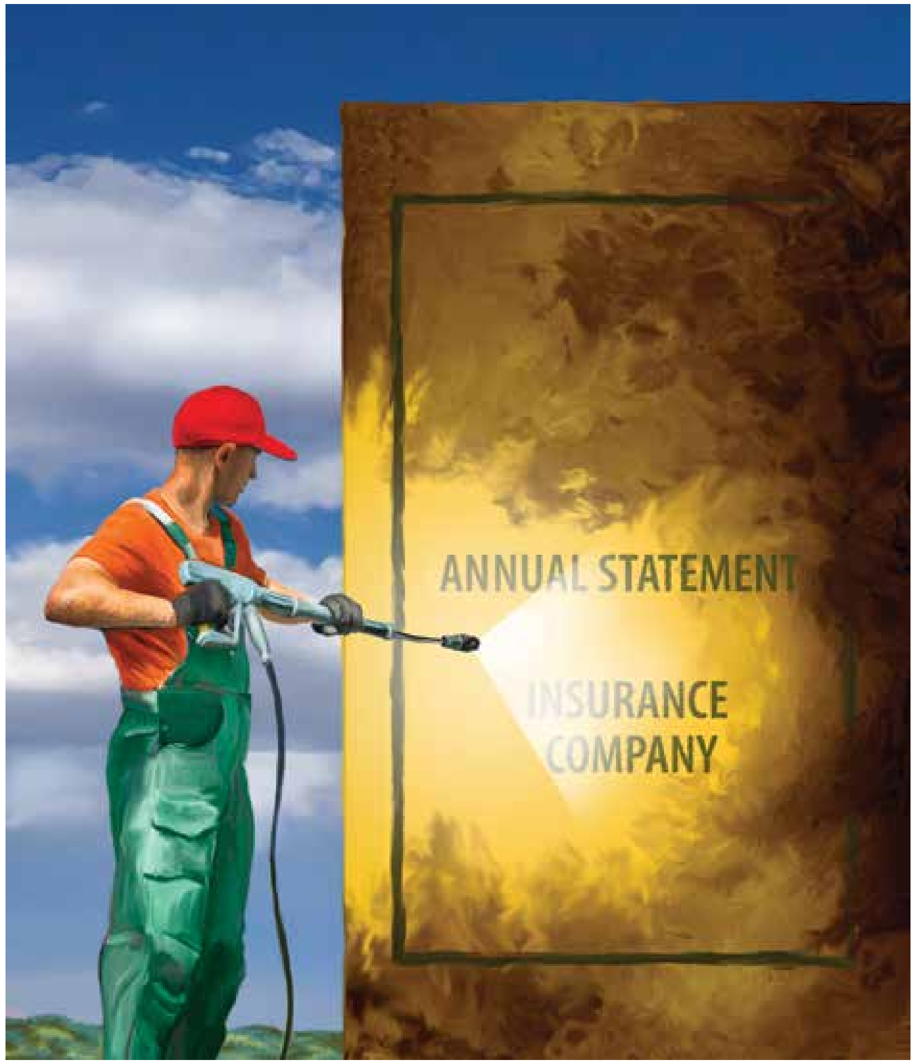


illustration / Rafael Edwards

Retrospective reinsurance is a retroactive form of reinsurance covering existing losses, whether in the form of case reserves or incurred but not reported (IBNR) reserves. Legacy transactions are generally first-dollar loss portfolio transfers on business put in runoff by the seller to achieve "near" finality on the transaction. The claims-handling responsibility is often transferred to the reinsurer. Adverse development covers and loss portfolio transfers tend to be associated with ongoing books of business, which contrast with legacy transactions that are associated with runoff portfolios.

What was once viewed as a move to offload underperforming business by desperate companies, retrospective reinsurance transactions are now more often being used as a proactive tool in a larger capital management playbook, unlocking capital that would otherwise be tied up in backing reserves, redirecting that freed-up capital for higher-yielding projects. It took many years and persistent delivery of solutions for the market to flip the stigma behind legacy transactions.

Within most retrospective deals, the quantitative benefits are undoubtedly the main driver behind these transactions. However, there are multiple qualitative benefits that come with the execution of a retrospective transaction as well. Looking ahead, we will review the quantitative drivers of legacy transactions and take a deeper dive into the qualitative benefits focusing on rating agency capital and rating agency assessments, notably those used by AM Best.

It took many years and persistent delivery of solutions for the market to flip the stigma behind legacy transactions.

Quantitative Benefits

To start, let's recap the driver of most retrospective transactions. Capital considerations underpin the vast majority of retrospective transactions, with a smaller number of deals with claims management being the number one concern.

Retrospective transactions are unique in that they transfer reserve risk, and in the case of the AM Best BCAR model and other rating agency capital adequacy models, the accompanying required capital that carriers are obliged to hold behind their reserves. These structured solutions are tailored to cede an optimal amount of this required capital the carrier otherwise would need to hold to a reinsurance company/legacy market. Through the transfer of this reserve risk, the net required capital the carrier has to hold to back up their reserves against the risk of adverse development is decreased. This process usually increases capital adequacy scores at an attractive cost.

RETROSPECTIVE REINSURANCE DEFINED

Retrospective reinsurance is a form of reinsurance relating to the reserves of the ceding company. Retrospective reinsurance provides coverage for losses that have already happened, transferring risk associated with past claims to a reinsurer. In this article, the types of retrospective reinsurance most commonly referred to are Adverse Development Covers (ADC) and Loss Portfolio Transfers (LPT). Adverse Development Covers provide coverage in excess of a specific retention. Loss Portfolio Transfers provide first dollar coverage.

Furthermore, retrospective transactions can facilitate mergers and acquisitions by walling off back years of underwriting results. Through the same transfer of reserve risk, carriers are able to cede the potential development implications of select lines of business to reinsurers/ legacy markets and mark a clean start, should they be the target of an acquirer. In similar cases, when there is new management at a carrier, retrospective transactions are useful in facilitating the mark of a new regime in underwriting philosophy by protecting new prospective underwriting results from the results of prior year development.

For more information about the quantitative benefits of retrospective transactions as well as insight into the legacy market, I would urge the reader to listen to Guy Carpenter's Fo[RE]sight Podcast: Episode 7, Legacy Transactions and their Capital Benefit for Insurers.

Qualitative Benefits

Continuing the discussion on the value of retrospective transactions are the benefits that do not necessarily come with a dollar value. Using AM Best's rating assessments as a guide, let's take a look at how structured legacy solutions provide regulatory and rating agency benefits outside of the capital adequacy scores.

Within the Balance Sheet assessment, there are multiple qualitative sub-assessments that AM Best and other rating agencies and regulatory bodies analyze to get a more holistic view of an insurance carrier's financial position at a point in time. Reinsurance program appropriateness is extremely important when discussing the strength of a carrier's balance sheet. The reinsurance program should transfer risk otherwise retained by the cedent, and reinsurance should be provided by a panel of high-quality reinsurance partners.

The reinsurance program should also match the underwriting risk and risk appetites of the carrier. Another important aspect within the overall analysis of the reinsurance program of a carrier is that it should provide protection against adverse fluctuations in experience, while not overly subjecting the carrier to adverse pricing spikes in the reinsurance market. Legacy transactions can be structured to capture all of these important aspects. As previously mentioned, legacy transactions aim to not only alleviate rating agency capital concerns, but also protect future earnings from adverse reserve development as well as give the cedent the ability to grow while being unburdened by prior experience. Generally speaking, structured solutions offered by legacy industry experts have been more in touch with how rating agency and regulatory bodies view these qualitative assessments of the balance sheet.

When considering the business profile of a carrier and how it relates to retrospective transactions, the most notable benefit is how it can improve their product and geographic concentration. Using a legacy transaction to exit or reduce concentrations in a specific line of business or geographic location could potentially improve the cedents assessment. Over-concentration within a line of business leaves the carrier open to adverse market conditions within that line of business such as adverse claims experience, market-wide inadequate pricing and potential for increased litigious presence. Too high a concentration within a geographic region leaves the carrier susceptible to the regulatory environment of that specific area. Legacy transactions could be used to reduce concentration in either line of business or product, as well as exit one of these all together.

> *Legacy transactions could be used to reduce concentration in either line of business or product, as well as exit one of these all together.*

Last, but certainly not least, is the role retroactive transactions play in the overarching enterprise risk management of an insurance company. In its most practical use, legacy transactions can provide an immense amount of value in risk appetite and tolerance. Having a demonstrable track record of a successful legacy transaction(s) may give rating agencies and regulatory bodies a greater sense of comfort that the carrier has a well-defined risk appetite, and action plan in place should this appetite's tolerance be breached.

Relating this to the previous example of product concentration, executing a legacy transaction ceding a certain amount of a line of business, should the concentration within that line of business exceed an internal pre-set threshold, demonstrates to regulatory and rating agencies that management has a plan in place to negate any negative rating or regulatory pressure that comes with this over-concentration. The same could be said should the carrier develop an overweight exposure to a certain geographic region.

Overall reinsurance risk needs to be monitored when considering general risk management within an insurance company. Legacy transactions can be structured in a way to mitigate these common reinsurance risks. Counterparty credit concerns, structure designs, dependence and pricing fluctuations are all aspects of the overall reinsurance risk weighing on carriers. Legacy transactions, while not able to completely avoid all of these, have historically been able to help insurance companies reduce some dependence on prospective reinsurance for growth/solvency needs, and could potentially help in decreasing the cost of future reinsurance transactions.

Conclusion

Retrospective reinsurance plays a vital part in the larger (re)insurance landscape. While not without its own risks, retroactive reinsurance transactions have historically been able to alleviate capital concerns, provide a host of quantitative and qualitative benefits, of which we have reviewed, and ultimately provide reassurance to mutuals and public companies alike. Looking at the legacy space, we notice a familiar cycle that comes with all maturing markets. Consolidation, increased competition and a more defined operating framework are all characteristics that one would expect to see as the legacy market continues to age. While these characteristics mostly benefit the carrier, it is up to each individual insurance company to stay on top of the changing landscape. Associations like AIRROC and literature/publications such as the Fo[RE]sight podcast are imperative to keep this market growing, and running smoothly and help buyers and sellers stay current on trends and regulations within this growing and vital segment of the reinsurance market. ●

Associations like AIRROC and literature/publications such as the Fo[RE]sight podcast are imperative to keep this market growing, and running smoothly…

Matthew Dachowski is a Financial Analyst with Guy Carpenter and a CFA charterholder. Prior to joining Guy Carpenter, he was with AM Best.

The Rise of Novations

Jose Martinez

The Smart of the Deal

Novations have long been an option in the insurance and reinsurance world, but their usage has evolved significantly in recent years. Once considered a simplistic tool, novations are now gaining traction as insurers recognize their value in managing legacy liabilities and optimizing capital.

The first section of this article will explore legacy reinsurance trends and current market dynamics to provide the backdrop for the rising popularity of novations. The second part of this article will provide an overview of novations and how they differ from other risk assumption vehicles, the challenges of a novation transaction and what the future holds in respect of legacy management solutions.

Legacy Market Trends

Legacy reinsurance is experiencing a resurgence as non-traditional retrospective solutions gain traction in the reinsurance and risk transfer markets. This shift is being driven by insurers' growing need to optimize capital, manage reserves and strategically address run-off liabilities.

One trend that has emerged is the increasing use of legacy transactions, such as loss portfolio transfers (LPTs), adverse development covers (ADCs), and novations. Specifically, these tools are being used to manage underperforming books, reduce balance sheet volatility, free up capital for growth, and meet regulatory requirements like Solvency II.

Private equity and alternative capital continue to flow into the legacy market, with investors drawn to the potential for strong returns through efficient claims management. Meanwhile, the legacy market is continually innovating, offering tailored solutions that are intensifying competition.

The industry's maturation is demonstrated by the increasing sophistication of deal structures and enhanced underwriting discipline, with improving regulatory oversight also helping to ensure compliance and fairness – particularly in complex cross-border deals.

Economic pressures, such as inflation and social inflation, are also impacting the market, prompting insurers to reassess their exposures and reserve adequacy, with an emphasis on sustainability and responsible claims handling.

Additionally, digital transformation is enhancing operational efficiency, with insurers leveraging advanced analytics and AI to improve outcomes. And M&A activity is surging, with larger firms acquiring smaller players to scale operations and expand capabilities.

These trends highlight the legacy market's evolution from a niche segment to an integral part of the insurance ecosystem, helping insurers manage liabilities and unlock growth potential.

Market Dynamics and Run-off Deals

The demand for run-off deals has been growing across several regions and lines of business as insurers and reinsurers seek to manage legacy liabilities and optimize capital.

In North America, the market is being driven by the prevalence of long-tail liabilities like workers' compensation and general liability. The increasing cost of claims due to inflation and rising litigation expenses have prompted insurers to divest these portfolios. Further, run-off solutions appeal in the U.S. due to a heightened focus on reserving adequacy from regulators and stakeholders.

Run-off transactions, where insurance liabilities are transferred to another party, are encountering several hurdles in today's market. Indeed, the industry finds itself at something of a crossroads, with factors such as social inflation, environmental liabilities and the absence of meaningful tort reform making it more difficult to finalize deals.

Another major obstacle is capital constraints. Rising interest rates and tighter regulatory environments have limited the availability of capital, making it harder for buyers to assume large portfolios. Resultantly, potential acquirers are becoming more selective, prioritizing high-return opportunities, which narrows the pool of viable deals.

Here, the shift in underwriting discipline within the run-off market is playing a role. Unlike previous years when competition led to aggressive pricing and a "race to the bottom," today's legacy players exercise greater caution, with valuation disagreements becoming more pronounced.

Economic volatility has further intensified discrepancies in assumptions about future claims, investment returns, and inflationary impacts. Sellers frequently overvalue portfolios in an effort to unlock capital, while buyers remain cautious and conservative, creating further friction.

One trend that has emerged is the increasing use of legacy transactions, such as loss portfolio transfers (LPTs), adverse development covers (ADCs), and novations.

At the same time, unpredictable liabilities such as asbestos, pollution, and health hazards are a challenge. Indeed, the uncertainty of per- and polyfluoroalkyl substances (PFAS) – a group of synthetic chemicals used in many industrial and consumer products – have left many markets unwilling to transact on these lines of business altogether.

The regulatory landscape also complicates run-off deals. Jurisdictions are imposing stricter requirements for reserve adequacy and solvency, increasing transaction costs and prolonging deal timelines. These heightened regulations often necessitate additional due diligence that can derail negotiations.

illustration / Rafael Edwards

Moreover, data transparency remains a barrier. Many legacy portfolios lack comprehensive or well-organized data, making it difficult for buyers to accurately assess risk and pricing. This further increases uncertainty, particularly in long-tail liabilities like workers' compensation or asbestos.

So, this begs the question – what needs to be done to move deals forward?

Both parties must adopt a collaborative approach. Enhanced data sharing and transparency can reduce uncertainty and valuation gaps, while leveraging advanced analytics or third-party actuarial reviews can help achieve more accurate pricing.

Additionally, sellers should consider structuring deals creatively, such as offering reinsurance components or partial portfolio transfers to mitigate buyer concerns, while regulatory bodies could help streamline approval processes to reduce delays.

Finally, the introduction of specialized investment funds or innovative financing structures could provide the capital to revitalize the run-off market, making it more conducive to successful transactions.

Overview of Reinsurance Novations

There are important differences between novations and alternative solutions such as commutations and loss portfolio transfers (LPTs). In a novation, all rights and obligations under a reinsurance agreement are transferred to another reinsurer with the original cedent's consent. Unlike commutations that extinguish liabilities or LPTs that bundle them, novations transfer the entire relationship to a new counterparty.

There are several key steps involved in the reinsurance novation process.

First, consent is required from all parties, including the cedent, original reinsurer and incoming reinsurer. Once this has been agreed, a precise evaluation of liabilities is then required to ensure fair pricing.

In addition, there must be compliance with jurisdictional requirements, such as Solvency II or local insurance laws. And finally, the operational transition must be managed seamlessly, updating systems, contracts, and communication protocols to reflect the change. Increasingly, novations are being exercised. Why is that? Well, novations allow insurers to release trapped capital, improving solvency ratios and enabling growth investment. Further, under frameworks like Solvency II, transferring legacy risks reduces capital charges, offering immediate financial benefits.

Not only that, but risk mitigation via novations may enable insurers to offload long-tail exposures, such as asbestos or environmental claims, which may have

By transferring these risks to specialist reinsurers or runoff providers, insurers can stabilize their balance sheets and spend more time focusing on their core business lines.

unpredictable payouts. By transferring these risks to specialist reinsurers or runoff providers, insurers can stabilize their balance sheets and spend more time focusing on their core business lines.

In this sense, they can simplify complex, diversified portfolios – something that is particularly valuable for global insurers managing business across multiple jurisdictions, where legacy liabilities can complicate compliance and reporting.

The Increase Utilization of Novations

Several market trends are driving the increased use of reinsurance novations.

Regulatory and economic pressures, like Risk-Based Capital (RBC) standards in the United States, emphasize capital efficiency. Meanwhile, legacy liabilities, with their unpredictable cash flows and high capital charges, are also prime candidates for novations.

Macroeconomic factors are also playing a significant role. Rising interest rates and inflation are driving up claims costs, making it increasingly expensive for insurers to manage legacy liabilities. Here, novations provide a solution, enabling insurers to transfer these risks to companies that have the expertise to handle them efficiently.

Captive insurers looking to exit legacy positions without dismantling the captive itself are increasingly exploring novation deals. These deals are particularly attractive for large corporations managing aging portfolios of property, liability or workers' compensation claims. For example, captives tied to multinational corporations operating in heavily regulated industries – such as energy, healthcare, and manufacturing – have completed novation deals to streamline operations and free up capital.

Commutations are also in demand, especially for legacy portfolios with low claim activity or stable reserves. These agreements allow insurers and reinsurers to settle old reinsurance agreements, particularly in long-tail casualty lines, thereby reducing administrative costs and reserve uncertainty.

With that said, sometimes situations will arise where the cedent prefers to keep the reinsurance, while the reinsurer wants to free up collateral-trapped capital. In these instances, novation to a third-party reinsurer often provides an effective solution for both parties.

Runoff specialists are increasingly participating in the novation market. These firms solely manage legacy portfolios, providing insurers an alternative to holding liabilities internally. By transferring risks to these specialists, insurers gain from their expertise and operational efficiencies.

The Future for Novations

The demand for legacy reinsurance novations is expected to rise as insurers and reinsurers seek to optimize capital, manage risks and adjust to changing market conditions. However, despite their benefits, novations are not without their challenges.

Take consent from the cedent. This is a fundamental requirement in novation transactions yet securing it can be a time-consuming process – especially when multiple jurisdictions or counterparties are involved. Stakeholders often need reassurance about the financial stability and operational capabilities of the incoming reinsurer.

Even when that consent has been secured, accurately valuing legacy liabilities requires robust data and sophisticated actuarial models due to data and valuation complexities. Here, poor data quality or insufficient historical information can complicate the pricing of novation deals, potentially causing delays or disagreements.

Further, operational transitions, such as updating contracts, IT systems, and claims handling processes, can be resource intensive. For global insurers, these challenges are amplified by variations in legal and regulatory requirements across jurisdictions.

In order to overcome these challenges and make novations a more accessible, seamless, viable solution as demand grows, it is important that stakeholders are engaged early in order to help build trust and streamline consent processes.

Additionally, building advanced data analytics and predictive modeling capabilities can help in dramatically improving valuation accuracy, while partnering with experienced runoff specialists or brokers can pay dividends in managing operational complexities.

The demand for legacy reinsurance novations is expected to rise as insurers and reinsurers seek to optimize capital, manage risks and adjust to changing market conditions.

Legacy reinsurance novations have become essential in modern risk and capital management. By enabling insurers to transfer liabilities, optimize capital, and concentrate on their core operations, they provide a strategic pathway to increased flexibility and resilience.

Insurers and reinsurers that adopt novations for legacy management will be better prepared to navigate future challenges as the industry evolves. However, collaboration, advanced solutions and key partnerships will be central to the viability and success of novations moving forward. ●

Jose Martinez Jr, VP Legacy Solution, Swiss Reinsurance Company. Swiss Re's Legacy team provides effective, customizable solutions for the risks associated with unresolved non-life liabilities. Mobile 312-961-9946. Jose_martinez@swissre.com.

Ardent Ardit Accepts Award

Kristen Kish

Ardit Kerimi Awarded the 2024 Trish Getty Scholarship

AIRROC and AIRROC's NextGen Council honored the 2024 Trish Getty Scholarship recipient, Ardit Kerimi, during the awards ceremony at the October Legacy Transactions & Networking Forum in Jersey City, NJ.

Since 2012, the $5,000 Trish Getty Scholarship has been awarded to an exceptional undergraduate student studying insurance, risk management, or actuarial science. The scholarship honors Trish Getty, the first Executive Director of AIRROC. Students across the country apply for the scholarship by submitting their resume and an essay and a subcommittee of NextGen members and AIRROC board members review the applications.

As in years past, the NextGen Council worked to expand the geographic outreach of the scholarship applicants and to widen the applicant pool. This year, we received the highest number of applications since the scholarship was founded.

Ardit not only has an impressive personal background, he has already proven his interest in the reinsurance space through his work experience in the industry. Ardit is a senior at Saint Joseph's University majoring in Risk Management and Insurance. He was born in the Republic of North Macedonia and immigrated to the United States at a young age. The move forced Ardit to learn a new language and culture while attending an under-resourced public school in Philadelphia.

AIRROC and the NextGen Council look forward to working with Ardit and seeing what the future holds for him.

Carolyn Fahey and Ardit Kerimi

While attending college once seemed like a distant dream to him, he is not only attending, he is the first member of his family to do so.

At St. Joseph's, Ardit is a member of *Gamma Iota Sigma*, the business fraternity for insurance, risk management, and actuarial students, and serves as a Grand Chapter Student Representative. This past summer, Ardit worked as a Leadership Development intern at Munich Re Specialty Insurance. The prior summer, he worked at Munich Re as an Underwriting Intake intern. After college, Ardit's goal is to pursue a career as a reinsurance underwriter.

In accepting the award, Ardit thanked his parents for making sacrifices that enabled him to pursue a college education and a career in the insurance industry. Ardit expressed his gratitude to AIRROC and explained how the scholarship will assist him in pursuing his education and career goals.

AIRROC and the NextGen Council look forward to working with Ardit and seeing what the future holds for him. ●

Kristen Kish is a Special Counsel at Mound Cotton Wollan & Greeengrass LLP. She handles reinsurance matters in arbitration and litigation, as well as first-party insurance coverage claims.

Legacy Transactions & Networking Forum • October 20-22, 2024

Shine On!

AIRROC celebrates the success of the 2024 Annual Legacy Transactions & Networking Forum. "A Guiding Light for Legacy" was the theme for this year as the AIRROC community once again gathered in Jersey City, New Jersey, to hold our premiere legacy industry conference, just steps away from the Hudson River and breathtaking views of the Manhattan skyline. The event is the largest annual legacy industry conference in the nation and this year was a huge success that attracted over 250 delegates in addition to many more tuning in to the education sessions via live stream.

Reuniting and reconnecting with colleagues, clients, counterparties, peers and friends truly make this event shine. Ultimately, it all boils down to building relationships, respect, developing a strong culture and promoting business efficiencies with the recognition that we are better together.

Bright smiles were plentiful as we share many delightful moments on the following pages.

We greatly appreciate the support from the AIRROC community and thank the attendees. Your participation and engagement contribute to the success of this event, as well as to AIRROC, and the legacy industry. ●

photos / Jean-Marc Grambert


AIRROC


AIRROC
THE WESTIN
JERSEY CITY


AIRROC










AIRROC
AIRROC


AIRROC



AIRROC



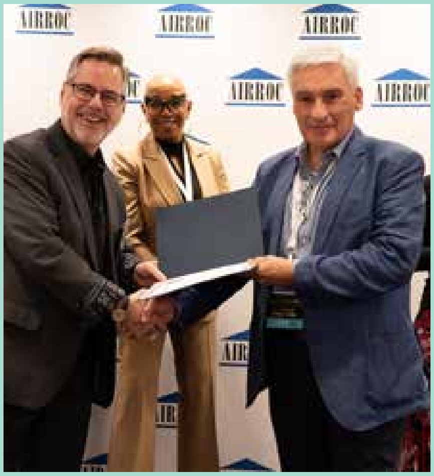



ESTIN






THE WESTIN
JERSEY CITY
NEWPORT


AIRROC

Building Bridges in Legacy

The Value of the Certified Legacy Professional (CLP) Designation

In the world of legacy insurance, the ability to connect knowledge, experience, and relationships is vital. Legacy professionals face the challenge of navigating persistent liabilities, regulatory complexities, and an evolving industry landscape.

AIRROC's Certified Legacy Professional (CLP) designation serves as a bridge—not just across the technical and professional gaps, but also as a way to connect individuals with a network of peers dedicated to excellence in this field.

Rest assured, we're not here to sell you the Brooklyn Bridge. Instead, we're offering you the tools to build a bridge of your own—one that connects you to professional growth, continuing education, and a thriving network of industry leaders.

Why the CLP Matters

Earning the CLP helps professionals build the bridges they need to succeed in the legacy sector:

Professional Improvement: The designation recognizes your expertise and demonstrates your ability to handle the complexities of legacy operations. It positions you as a leader, opening doors to higher-level positions and increased earning potential.

Continuing Education: The CLP provides structured learning opportunities that refine your skills and broaden your knowledge. From specialized coursework to engaging industry resources, it equips you to tackle the most challenging aspects of legacy insurance.

Networking Opportunities: The designation connects you with a growing community of professionals dedicated to innovation in the legacy sector. Through AIRROC events and collaborative platforms, the CLP fosters relationships that enhance your career and impact the industry as a whole.

A Designation for Every Stage of Your Career

The CLP isn't reserved for those who are "long in the tooth" or who have decades of experience under their belt. With a requirement of just two years of experience in the legacy sector, it's an ideal way for professionals at any stage of their career to deepen their expertise, build their network, and advance their skills. Whether you're just starting out or looking to expand your professional horizons, the CLP offers valuable resources to help you succeed.

CERTIFIED LEGACY PROFESSIONAL

What Industry Leaders Are Saying

Some professionals who have earned the CLP agree on its transformative impact:

Marcus Doran, AIG: "Run-off/legacy business involves the most difficult and persistent liabilities in the business. The CLP attests to your ability to take those liabilities head-on."

Stewart Richmond, The RiverStone Group: "The CLP offers an opportunity for specific training in this niche business. I encouraged my team to pursue the designation, and I felt it was important to lead by example."

How to Build Your Bridge to Success

The path to earning the CLP is designed to integrate seamlessly with your professional journey. Requirements include:

1. **Application Submission**: Complete and submit your application to the CLP Committee.

Congratulations to our 2024 CLP recipients!

Caryn Siebert
Gallagher Bassett

Judy Harnadek
Resolute Management Inc.

Bill Goldsmith

Greg Capps
Brandywine Group

John Glowacki
The RiverStone Group

Carole Overmyer
Allstate

Kathryn Reynolds
The Hartford

Quayla Lambert-Hill
The RiverStone Group

Brian Pernel
The RiverStone Group

Dawn Ballin
Enstar (US)

Steven Goate
Davies Insurance Services

Kimberly McDonnell
Brandywine Group

Mike Terelmes and Dawn Ballin

Mike Terelmes and Bill Goldsmith

2. **Professional Recommendation:** Provide a recommendation from an AIRROC member company representative.
3. **Experience**: Demonstrate at least two years in legacy sector roles.
4. **Event Participation**: Attend three AIRROC or other approved industry events.
5. **Educational Elements:**
    - Complete the AIRROC ADR online module.
    - Engage in five AIRROC readings or on-demand videos.
    - Satisfy coursework requirements or submit equivalent qualifications based on your background.
6. **Final Review**: Submit documentation for final approval from the CLP Committee.

A Growing Community of Legacy Professionals

The CLP designation is more than a credential—it's a connection to a network of professionals who share your passion for legacy insurance. AIRROC's educational resources and events provide ongoing opportunities to learn, collaborate, and contribute to the future of the legacy sector.

By pursuing the CLP, you're building bridges that connect knowledge, career advancement, and relationships—all critical for thriving in this specialized field.

Start Your Journey Today

The CLP designation isn't just for seasoned veterans; it's for anyone ready to step up and embrace the opportunities that the legacy sector offers. Visit www.airroc.org/clp-designation for application details and begin building your bridge to success.

The legacy insurance sector thrives on the connections we create. With the CLP designation, you can strengthen those connections, enhance your expertise, and take your career to the next level.

Are you ready to build your bridge? ●

Michael R. Terelmes, CPA, CGMA, CLP is Managing Director USA at Compre Group and AIRROC board member. He has over 25 years of experience in the legacy reinsurance space.

NextGen Aces Activities

NextGen Council Corner: 2024 Year in Review

(left to right) Joel Ridd, Kristen Kish, Mandy Collins, Natalie Weedman, Layla Trummer, Sean Collins, David Silvers, Abby Holmes

It is time once again for the AIRROC NextGen Council to reflect on the past year, both as individual professionals and as a group. This is our second full year operating as a Council after our humble beginnings as a Task Force. Our goal is to create educational, networking, and leadership opportunities for other young professionals in legacy. We were able to accomplish much in the past year, thanks to the efforts of Council members, AIRROC Member Companies and Partners, and many volunteers and other individuals far too numerous to list in this article. Furthermore, the Council is grateful to the AIRROC Board of Directors for its continued guidance and support, and wishes to extend special thanks to our fearless Executive Director, Carolyn Fahey.

AIRROC NEXTGEN

The 2024 Council consists of co-chairs Layla Trummer (Allianz), Natalie Weedman (Swiss Re), Abby Holmes (Accredited), Joel Ridd (RiverStone), Mandy Collins (Resolute), Sean Collins (The Hartford), Kristen Kish (Mound Cotton Wollan & Greengrass LLP), Juliana Toes (Mayer Brown), and David Silvers (RiverStone). Each member has dedicated a significant amount of time to AIRROC, various NextGen Council committees, and the legacy industry. The following is a breakdown of accomplishments:

Education

Members: Joel Ridd (RiverStone), Juliana Toes (Mayer Brown), Chris Gindraux (Swiss Re), Andy Meerkins (Foley & Lardner), Frank Simpson (Brandywine), Priya White (Enstar)

The Education committee set a goal of hosting at least two sessions, and to create additional opportunities for NextGen members to present. The committee greatly exceeded those expectations and managed four events during the year:

February: "Legacy Transactions – Terminology, the Process, and Contract Terms" at the AIRROC Mayer Brown Runoff Deal Market Forum. NextGen presenters included Matt DiSanti (Aon), Megan Kuzniewski (Enstar), Juliana Toes (Mayer Brown), and Layla Trummer (Allianz).

July: Intern Day collaboration with ReUnder40s- NextGen members Paige Adams (Gallagher Re) and Joel Ridd (RiverStone) presented to an audience of over 100 interns working for various reinsurers and brokers in the New York area.

October: "Charting our Path: Minority Narratives in a Corporate World" at the AIRROC NJ 2024 Legacy Transactions & Networking Forum. Kristen Kish (Mound Cotton Wollan & Greengrass LLP) represented NextGen on the panel.

October: "Basics of Arbitration Workshop: The Key Things for Insurance Professionals to Know" presented concurrently with the NJ 2024 Legacy Transactions & Networking Forum. Kristen Kish (Mound Cotton Wollan & Greengrass LLP) moderated the panel.

NextGen would like to thank AIRROC, our panelists, partners and hosts for making these events possible. Video replays are available in the On Demand library with the exception of the Arbitration Workshop, which was an in-person exclusive for attendees.

Social

Members: Mandy Collins (Resolute), Sean Collins (The Hartford), Jared Anderson (Enstar), Shi Jones (Troutman Pepper Locke)

The Social committee set a goal of hosting at least one event. Much of the committee's budget was redirected to ensure the success of the ReUnder40s Intern Day as discussed above. The Social Committee also sponsored a Bingo activity at the Legacy Transactions & Networking Forum. Attendees were encouraged to get to know their colleagues better by filling out various "squares" on a Bingo card, such as "first time attending an AIRROC event" or "has attended a Broadway show."

Digital Content

Members: David Silvers (RiverStone), Natalie Weedman (Swiss Re), Abby Holmes (Accredited), Sean Collins (The Hartford)

The Digital Content committee began the year with a goal of growing AIRROC's social media presence and

We are always looking for new members, and offer a variety of opportunities and varying levels of commitment, so please reach out and get involved. For more information, visit airroc.org.

group awareness through new content. They set a regular cadence of at least one LinkedIn post per week, resulting in a significant boost to our LinkedIn presence. Additionally, they produced several articles to the NextGen Council Corner in the AIRROC newsletter. In the future, the committee hopes to add to its multimedia presence through video and audio content.

Awards

Members: Mandy Collins (Resolute), Kristen Kish (Mound Cotton Wollan & Greengrass LLP), Beth Brown (Swiss Re), Liz Miller (Compre), Brett Woodis (R&Q)

2024 was the 13th anniversary of the AIRROC Trish Getty Scholarship and a record number of applications were received. The winner, Ardit Kerimi, was a participant at the ReUnder40s Intern Day event. Read all about Ardit elsewhere in this magazine and online.

We are always looking for new members, and offer a variety of opportunities and varying levels of commitment, so please reach out and get involved. For more information, visit airroc.org.

David Silvers is a Complex Assumed Claims Analyst at RiverStone and a member of both the AIRROC NextGen Council and Digital Content committees. He can be reached at David_Silvers@trg.com.

Life in the PFAST Lane

Initial PFAS Claim Considerations

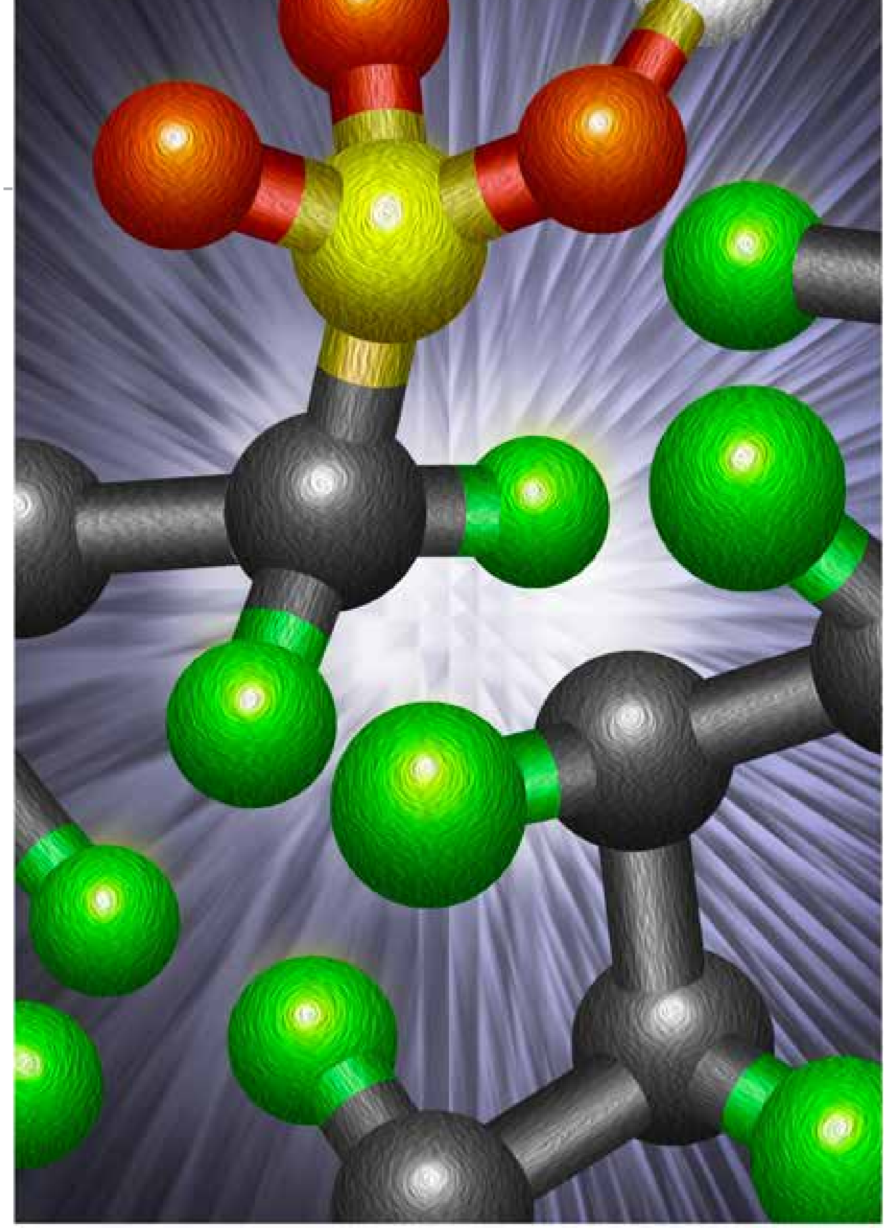


illustration / Rafael Edwards

Introduction

Per and Polyfluoroalkyl Substances (PFAS) is a catchall phrase to refer to more than 12,000 man-made chemicals. PFAS are commonly referred to as "forever chemicals" because they do not break down easily in the environment. These chemical compounds were first patented in the 1940s. PFAS have been widely used as additives in consumer goods because of their water, stain and grease resistant properties. While these qualities made PFAS a commercial success, that same success is now giving rise to a breadth of litigation as the compounds are allegedly linked to medical ailments.

There are currently more than 6,400 PFAS related suits nationwide. Plaintiffs are not only suing PFAS manufacturers but these suits also target nearly every member of the supply chain who is alleged to have incorporated PFAS into an end product.

For example, cases abound in the consumer class action context, where plaintiffs have brought putative class actions against a range of companies, including sellers of orange juice, band aids, baby wipes and razors. These suits focus on advertising truthfulness and the failure to disclose the presence of PFAS in products. Further, many plaintiffs, including individuals, public, quasi-public and private water providers, state and municipal government authorities have sued a variety of defendants, most notably manufacturers and alleged polluters, claiming property damage, bodily injury, or personal injury, or some combination thereof, from PFAS exposure. Perhaps the most publicized PFAS action is the multidistrict litigation (MDL) currently pending in South Carolina. The MDL concerns PFAS contained in aqueous film-forming foam which is used to fight fires and has resulted in several large settlements, totaling more than ten billion dollars.

Bearing in mind the pervasive litigation landscape surrounding PFAS, this article focuses on discrete issues that have arisen in the insurance coverage litigation context. Not intended to address every possible issue that has arisen in the courts to date, this article aims to discuss initial considerations for evaluating a PFAS related claim and highlights recent caselaw on applicable exclusions.

For example, cases abound in the consumer class action context, where plaintiffs have brought putative class actions against a range of companies, including sellers of orange juice, band aids, baby wipes and razors.

Claim Considerations

a. Injury Alleged

The growth in PFAS related claims have seen plaintiffs pushing the envelope to get into the courthouse. Establishing legal standing to sue is one such area where litigants are getting creative.

Standing requires that a plaintiff demonstrate it has suffered an actual injury that is fairly traceable to the challenged conduct. In personal injury suits, this means that the complaint must allege an actual, concrete injury and not a hypothetical or contingent harm. Generally speaking, without standing, a plaintiff cannot bring a valid complaint against a defendant or group of defendants in a U.S. court.

The issue of legal standing is pertinent to the PFAS space because one damages theory that certain plaintiffs have put forward is that their exposure to PFAS has resulted in "subclinical cellular changes" but without an allegation of present injury and without any physical manifestation of injury stemming from the alleged exposure. Instead, plaintiffs maintaining this theory rely on the alleged increased risk of future harm from exposure with the hope of stating a cause of action. However, without a showing of immediate, actual harm, these claims are susceptible to a motion to dismiss, as courts across the country routinely hold that actual, present injury is necessary to state a cause of action. This is an important coverage consideration too because without bodily injury coverage is not triggered.

b. Route of Exposure and the Pollution Exclusion

We have observed that a typical PFAS personal injury suit alleges that an individual or entity has suffered harm by way of its exposure to PFAS. One important consideration in assessing whether defense (and ultimately) indemnification exists for these types of suits is the alleged route of exposure. The exposure alleged can be direct (i.e. immediate) to the individual or entity, through exposure in the environment, or a combination thereof. The exposure route is an important initial consideration because the route is crucial in assessing whether a pollution/hazardous materials exclusion can apply to the claim at issue. The hazardous materials/pollution exclusion will usually act to remove from coverage claims stemming from environmental exposure.

We have observed that a typical PFAS personal injury suit alleges that an individual or entity has suffered harm by way of its exposure to PFAS.

For example, in *Tonoga, Inc. v. New Hampshire Ins. Co.,* the New York Appellate Division enforced the pollution/hazardous material exclusions in the subject insurance policies, finding insurers had no duty to defend or indemnify. 159 N.Y.S.3d 252 (2022). In that case, beginning in 1961, insured owned a manufacturing facility in update New York where it produced materials coated with PFAS. It ceased using the PFAS agents in 2013 but PFAS was discovered in the surrounding area in 2016 with levels in the drinking water exceeding advisory levels. Insured's facility was designated a superfund site and lawsuits followed.

Insured had multiple insurance policies during the relevant time period. Each policy generally required the insurer to defend and indemnify insured for all damages stemming from claims of bodily injury and property damage. The policies, however, excluded, among other occurrences, coverage for bodily injury and property damage caused by pollution, though one policy included an exception to its pollution exclusion if an occurrence was "sudden and accidental."

Insured commenced an action seeking, among other things, a declaration that insurers were obligated to defend it in the underlying suits. In assessing whether the pollution exclusions excused insurers from providing a defense, the Court focused on the following facts:

> That fabrics were soaked in solutions containing PFAS. That those fabrics were processed in industrial ovens where the heat vaporized a portion of the solution and that vapor was in turn discharged through the facility's smokestacks. Microparticles from that vapor were ultimately deposited onto soil surrounding the facility and, from there, seeped into the groundwater. Insured's employees allegedly poured PFAS solution down floor drains and sinks. PFOA and/or PFOS were alleged to have traveled through the facility's septic system and into the soil and groundwater. Employees routinely transported waste containing PFOA and/or PFOS, such as sludge and rags, to the municipal landfill where the substances eventually leached into the soil and groundwater.

After reviewing this conduct, the Court concluded that the damages resulting from this sort of broadly dispersed environmental harm fell squarely within pollution exclusions. In addressing whether the sudden or accidental exception to the pollution exclusion required insurers to provide a defense, the Court again focused on the *long term* nature of the alleged pollution and the underlying conduct giving rise to it. There the Court emphasized that such long term pollution, spanning a period of years, suggests "the opposite of suddenness" and found that the qualified pollution exclusion did not serve to invoke insurers' duty to defend. The *Tonoga* case demonstrates the importance of closely examining the insured's underlying alleged conduct to assess coverage implications. Indeed, the multiple suits brought against the insured, and for which it sought coverage, alleged that PFAS were pollutants and that the insured discharged those pollutants into the air and groundwater, firmly bringing the conduct within the policies' pollution exclusions.

By contrast, in a recent North Carolina federal court opinion, the Court found that the insurer was required to provide a defense regarding suits alleging injury caused by something other than traditional environmental pollution, as the hazardous materials exclusion contained in the policy at issue would not apply to bar any duty to defend. *Colony Ins. Co. v. Buckeye Fire Equip. Co.*, No. 319CV00534FDWDSC, 2020 WL 6152381, at *1, *2 (W.D.N.C. Oct. 20, 2020), aff'd, No. 20-2208, 2021 WL 5397595 (4th Cir. Nov. 18, 2021).

In that case, the insured manufactured aqueous film-forming foam and faced hundreds of claims in the South Carolina MDL as a result. The policy at issue contained a hazardous materials exclusion, which excluded from coverage: "bodily injury…which would not have occurred in whole or in part but for the actual, alleged, or threatened discharge, dispersal, seepage, migration, release or escape of hazardous materials at any time." The policy defined hazardous materials to include pollutants, lead, asbestos, silica and materials containing them. The policy defined pollutants as any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste.

The insured conceded that the hazardous materials exclusion served to bar any request that the insurer defend it from suits alleging solely environmental exposure, but as regards the duty to defend in connection with underlying suits that alleged injury from something other than environmental exposure, the Court found the duty to defend was triggered. The practical implication of the decision was that the insurer had no defense obligations in two-thirds of the roughly five-hundred claims the insured was facing but was obligated to defend the remaining suits alleging something other than environmental exposure.

c. Occupational Disease Exclusion

One issue that has not been thoroughly litigated in the PFAS context is whether an occupational disease exclusion can remove certain claims from coverage. A fairly recent case in the Sixth Circuit touched on this issue. In *Admiral Ins. Co. v. Fire-Dex, LLC* case, the federal district court viewed the application of the occupational disease exclusion as unsettled under Ohio law, declined to exercise jurisdiction, and dismissed the insurer's complaint, citing federalism concerns. No. 1:22-CV-1087-PAB, 2022 WL 16552973 (N.D. Ohio Oct. 31, 2022), aff'd, No. 22-3992, 2023 WL 3963623 (6th Cir. June 13, 2023).

But notwithstanding the ultimate outcome of *Admiral*, the facts of the case can provide some guidance on how the occupational disease exclusion could come up in an insurance coverage litigation involving PFAS. In the case, the insured manufactured firefighting materials containing PFAS and faced claims that its products caused cancer in firefighters and their spouses. The insured sought defense and indemnity for these suits. The insurer denied coverage and sought a declaratory judgment that it had properly done so, relying on the "occupational disease" exclusion, among other policy language, in denying coverage. The occupational disease exclusion, provided "[t]here is no coverage afforded . . . for any bodily injury to any individual resulting from any occupational . . . disease arising out of any insured's operations, completed operations or products."

To reach these conclusions, the experts rely on historical weather data, site samples and make use of models to estimate both past and future PFAS exposure and concentration levels.

As mentioned above, the district court declined to exercise jurisdiction over the declaratory judgment action citing federalism concerns and on appeal the Sixth Circuit agreed. Nonetheless, this case previews the potential application of the occupational disease exclusion to PFAS claims.

d. PFAS Exclusion

The Insurance Services Office (ISO) has created PFAS endorsements designed to broadly exclude bodily injury, property damage and personal and advertising injury associated with PFAS from coverage. These endorsements pertain to commercial general liability policies, commercial liability umbrella policies and others. They were effective as early as May 2023 and have been met with regulatory approval.

The Use of Experts in PFAS cases

Experts are frequently utilized in the PFAS space to opine on the nature and scope of alleged discharge. These experts are civil engineers, environmental scientists and/or meteorologists. Their opinions focus on the way PFAS is disbursed through the air and groundwater in the geographical areas impacted by PFAS. To reach these conclusions, the experts rely on historical weather data, site samples and make use of models to estimate both past and future PFAS exposure and concentration levels.

Expert opinions could be useful in establishing the difference between a sudden and accidental PFAS discharge and one that was determined to be made voluntarily over time as we saw in the *Tonoga* case. For example, experts in this space can study the pattern and concentration of PFAS contamination from a particular source. These patterns and intensity levels can provide insight as to whether the PFAS discharge was sudden and accidental or consistent over a period of time.

Conclusion

There are clearly a number of considerations to be aware of when evaluating a PFAS related claim. The initial focus should be on the harm alleged, whether bodily injury through direct exposure, through more attenuated environmental exposure or otherwise. Further, to the extent a PFAS claim does trigger coverage, a focused review should include consideration of applicable exclusions. Finally, depending on the progress of the claim and the status of litigation, the use of scientific experts to opine on issues such as the pattern and concentration of PFAS may also be important. ●

Erika M. Lopes-McLeman is a Partner in Dentons' New Jersey office, where she represents insurance carriers in complex insurance coverage litigation, bad faith actions and insurance related class actions.

Jim McGann is an Associate in Dentons' New Jersey office. His practice focuses on complex commercial litigation, with specific attention to insurance coverage and mass tort product liability matters.