

# Insurance and Reinsurance

STROOCK



**Stroock's Insurance and Reinsurance practice is recognized for its broad experience and dedication to serving the insurance industry. We provide counsel and strategic advice on domestic and cross-border mergers and acquisitions, capital markets transactions, reinsurance transactional, litigation and arbitration matters, regulatory matters (including market conduct investigations by regulators and state Attorneys General), compliance issues, rogue agent issues, international sales practices and tax matters.**

We offer a breadth of knowledge and experience that few other law firms can match, partnering with our clients to provide sophisticated solutions that are effective and add value in support of your commercial objectives. Our integrated industry-focused approach brings together skilled practitioners from different insurance-related disciplines, including insurance corporate, tax, litigation and regulatory specialists. We work with clients to help them operate in a regulated industry, successfully consummate transactions, navigate potential disputes and regulatory exposures and if necessary, to manage complex litigations, arbitrations and government investigations.

# OUR SERVICES

- Annuity Hedging Programs and Other Capital and Surplus Relief Transactions
- Bespoke Reinsurance Transactions
- Catastrophe Bonds
- Demutualizations and Sponsored Demutualizations
- Embedded Value Transactions
- Financial Condition Regulation and Regulatory Financial Condition Examinations
- Joint Ventures
- InsureTech and Blockchain
- Captive Formation and Transactions
- Litigation and Arbitration including Bermuda Form
- Life Insurance Reserve, Embedded Value and Bespoke Reinsurance Transactions
- Mergers and Acquisitions
- Reinsurance and Other Insurance Financial Transactions
- Restructuring and Run-Off
- State and Federal Investigations
- Reserve Financing Transactions

# Insurance and Reinsurance

## INSURANCE INDUSTRY MERGERS AND ACQUISITIONS

Stroock attorneys have a long and successful track record in virtually every kind of corporate insurance industry transactions, including public and private mergers and acquisitions, joint ventures, asset acquisitions, renewal rights transactions for both direct and reinsurance business, demutualizations and sponsored demutualizations.

Stroock's mergers and acquisitions clients include public and private companies pursuing strategic acquisitions, divestitures and joint ventures, as well as buyout funds and other financial buyers. Stroock attorneys have been particularly active in insurance company acquisitions and acquisitions and divestitures of lines of business. Our insurance mergers and acquisitions clients have included Arch Capital, Atlas Merchant Capital, ORIX Life Insurance Corporation, J.C. Flowers & Co., Reservoir Capital, Arrowpoint Capital, Royal & Sun-Alliance USA, Atlantic Mutual, Dukes Place, Specialty Underwriters' Alliance and Liberty Mutual.

We have been counsel to acquiring companies, sellers and target corporations, their boards of directors, financiers and financial advisers in tender offers, proxy contests, mergers and acquisitions, reorganizations, management buyouts and corporate restructurings and the litigation and administrative proceedings that frequently accompany those transactions.

We also have served as counsel for special committees of independent directors of target companies. Our experience extends both to negotiated and unsolicited transactions, as well as to related bank financings, public offerings, private placements and the counseling of investment banks in their roles as M&A advisors.

**They have a breadth of analysis, very deep experience and track record and good connections.**

Chambers USA

# Insurance and Reinsurance

## INSURANCE FINANCE AND BESPOKE REINSURANCE TRANSACTION

Stroock attorneys have been leading participants in the field of insurance finance for many years. Our attorneys have deep and wide-ranging technical and regulatory experience in a variety of transactions for the purpose of providing funding to insurance companies and/or to shift portfolio risk from insurance companies to banks (including bank-owned reinsurers) and capital markets investors.

Stroock's tax and derivatives practices are integral to the firm's insurance finance work, helping to tailor structures and solutions for onshore and offshore clients. We have represented U.S. and international financial institutions, including reinsurers, lenders and other market participants, in transactions involving Bermuda, the Cayman Islands and other offshore jurisdictions. Stroock represents domestic corporations operating abroad, whether directly or indirectly through subsidiaries and branches and foreign persons investing in the U.S.

### Our experience includes the following:

**Regulation Triple X, Guideline AXXX, Embedded Value and Bespoke Reinsurance Transactions:** Stroock has been a leader in the area of reserve-financing, bespoke reinsurance and embedded value transactions since the inception of these structures. Stroock attorneys have represented Goldman Sachs, Citigroup, Crédit Agricole, Deutsche Bank, FGIC, Lehman Brothers, JPMorgan Chase, Liberty Mutual, MBIA and Nomura in transactions with, among others, ACE Tempest Re Americo Financial, MetLife, SCOR, Aviva, Legal and General, Mutual of Omaha, Phoenix, Prudential, UnumProvident, Genworth Financial, Protective Life, Scottish Re, Wilton Re and Tokio Marine.

**Catastrophe Bonds:** Stroock attorneys have represented ceding companies, underwriters and investors in the Cat bond area. We have worked on a diverse range of transactions on behalf of U.S. and European clients involving risks linked to multiple perils, including earthquakes, floods, hurricanes, wind and combinations of these and other potential catastrophes and triggers, including indemnity, parametric, index and modeled losses. In addition to the peril and trigger variables, we have been involved with setting up shelf programs for issuers. Stroock attorneys have represented Akibare II Ltd., Avalon Re, East Lane V, Fermant Capital, Golden State Re, Javelin Re, Johnston Re Ltd, Kamp Re, Loma Reinsurance

Ltd., Long Point Re III Ltd., Mystic Re III, Oak Leaf Re, Oil Casualty Insurance Ltd., Pelican Re Ltd., Residential Reinsurance, SR Wind and Vitality RE I-III. Stroock also advises clients on developments (e.g., regulatory, collateral, tax and structural enhancements) affecting new Cat bond programs.

# Insurance and Reinsurance

Excels in insurance and reinsurance transactions, with the practice supported by the firm's tax and corporate teams.

Legal 500 USA

## VARIABLE ANNUITY HEDGING PROGRAMS AND OTHER CAPITAL AND SURPLUS RELIEF TRANSACTIONS

Stroock has helped clients design, structure and establish variable annuity hedging programs in both reinsurance and derivative form involving companies in the U.S., Japan and Bermuda. These transactions have included our representation of leading investment banks.

**Stroock's insurance clients include leading insurers, reinsurers and financial institutions throughout the industry, such as:**

AIG	J.C Flowers & Co.
Allianz	Liberty Mutual
Americo Financial	Munich Re
AON	Nomura
Arch	ORIX Group
Arrowpoint Capital	ProSight
Atlas Merchant Capital	Reservoir Capital
Bank of America Merrill Lynch	Willis XL Group
Chubb	
CNA	
Crédit Agricole	
Deutsche Bank	
Genworth Financial	
Goldman Sachs	

# Regulatory

Our attorneys have earned a reputation for thoughtfulness, thoroughness and integrity through many years of substantive involvement in public and industry affairs. Individuals have worked as regulators and as interested parties on numerous National Association of Insurance Commissioners undertakings, including risk-based capital, liability-based restructuring, insurance securitization and qualified financial contracts. We have a long history of providing assistance to industry groups, having acted for groups as diverse as the International Swaps and Derivatives Association and the Mortgage Insurance Companies of America. Our deep knowledge of regulatory trends and issues ensures that our clients' views are seen by regulators as worthy of consideration.

Our clients include traditional participants in the insurance and reinsurance marketplace, such as insurers and intermediaries. They also include financial institutions and other businesses seeking to invest or participate in the marketplace as buyers or sellers of protection.

We have longstanding experience in guiding insurance company clients through existing regulatory frameworks at both the state and national level to accomplish their business objectives. Our group's members, which include both attorneys and non-lawyer professionals, have extensive professional experience in the insurance regulatory industry.

## REGULATION OF TRANSACTIONS

Stroock helps clients obtain necessary regulatory approvals for acquisitions of control (whether contested or uncontested) or, as needed, obtain determinations that a given investment would not constitute an acquisition of control.

*Stroock also helps clients with affiliate transactions that involve regulatory issues, such as:*

- assisting a large international property/casualty insurance group in restructuring its multi-billion dollar intercompany pool; and

- securing regulatory approvals for the formation, financing and licensure of Build America Mutual Assurance Company ("BAM"), the first mutual financial guaranty insurance company.
- Stroock has particular experience with enterprise risk management and internal controls. Our attorneys successfully guide clients through regulatory financial condition examinations, particularly where proposed findings threaten a material disruption of the insurer's business.

## Services include:

- Insurer and intermediary formation and licensing;
- capital and surplus requirements;
- corporate governance;
- statutory accounting and financial reporting requirements;
- regulatory examinations and investigations;
- mergers, acquisitions and other corporate changes; and
- discontinued operations, restructurings and receiverships.

**Stroock & Stroock & Lavan LLP has expertise in multiple insurance-related transactional and regulatory matters, including financial restructuring, insolvency, demutualizations and market conduct.**

Legal 500



## TROUBLED COMPANIES

Stroock works with clients in troubled company situations. This includes receiverships, which our dedicated insurance team strives to help clients avoid. If this is not possible, however, we advise clients on how to prepare for an orderly receivership.

### *Representative transactions in this area include:*

- counsel to Financial Guaranty Insurance Company in the development of an innovative consensual rehabilitation plan to resolve its self-reported \$3.7 billion insolvency; and
- advising companies or management in the run-up to several significant insurance company receiverships, including Frontier, Reliance, Legion and Atlantic Mutual.

## INSURANCE MARKETS AND INVESTIGATIONS

Stroock has practical knowledge of insurance products and markets as well as of the related licensing and state filing requirements.

### *Examples include:*

- devising an excess lines solution to, in effect, provide floor plan coverage to farm implement dealers concurrently with their dealership agreements; and
- advising an international insurance brokerage subject to regulatory investigation concerning coordination of admitted and excess line placements with independent procurement and drafting a corresponding regulation and enabling legislation.

## SPECIAL COUNSEL

Stroock is often called upon to serve as special insurance or special insurance regulatory counsel.

### *Representative matters include:*

- providing specialist advice to a United Kingdom insurer with respect to a reinsurer-affiliated surety bond proposed to guarantee a reinsurance obligation owed to it; and
- advising a major international bank with respect to a letter of credit being issued to secure a large deductible program in the United States.

# Dispute Resolution and Counseling

**Experienced in handling major disputes, including trial and arbitration proceedings, on behalf of insurers, reinsurers, ceding companies and intermediaries.**

Chambers USA

Our attorneys represent national and multinational insurers and reinsurers in a wide range of matters, including high-exposure reinsurance matters, complex coverage and bad faith disputes, consumer class actions and routine coverage litigation where practical. Our experience includes the representation of parties in some of the largest reinsurance disputes, both domestic and international, with billions of dollars in aggregate losses at risk.

We have represented clients in high-stakes reinsurance and insurance disputes, both in court and in alternative dispute resolution proceedings, relating to diverse areas, such as life reinsurance; asbestos and environmental; oil & gas, utility and nuclear; aviation; financial guarantee; workers' compensation; broker negligence; professional liability; and MGA programs.

Our attorneys also routinely represent insurers in some of the most high-risk jurisdictions in complex coverage and bad faith disputes arising from commercial general liability, excess/umbrella, automobile, professional liability, workers' compensation, D&O and commercial property policies, among others. We advise insurers regarding claims-handling and the avoidance of litigation and bad faith exposure. We also serve as monitoring counsel.

We also bring our substantial consumer class action experience to bear on behalf of insurers, routinely representing insurers in putative consumer class actions arising out of efforts to enforce state insurance codes and federal insurance statutes, like the Medicare Secondary Payer Act.

Leading insurance and reinsurance companies rely on our firm to protect their interests because we have the ability to deploy a range of litigation professionals with a deep understanding of the industry. We help clients proactively avoid disputes through policy and reinsurance contract wording revisions. Our attorneys also act as settlement counsel to companies already engaged in disputes. When litigation cannot be avoided, Stroock brings a wealth of experience to bear.

# Dispute Resolution and Counseling

## REINSURANCE

*In the reinsurance arena, we handle complex disputes at the forefront of the industry, including:*

### **Catastrophes/Natural Disasters:**

Stroock has represented both cedents and reinsurers in reinsurance disputes relating to losses from catastrophic events, including the World Trade Center; war and terrorism; tanker spills; losses in the oil & gas, utility and nuclear sectors; numerous natural disasters, including Hurricanes Ivan, Katrina, Rita and Wilma; California wildfires; and financial disasters, including Enron, financial frauds and financial guarantees. We have also represented parties in connection with catastrophe losses ceded under whole account treaties, as well as property-specific and ocean marine treaties. Additionally, we have successfully argued for rescission on behalf of reinsurers/retrocessionaires based upon misrepresentations and non-disclosures made by the reinsured/retrocedent at placement relating to the make-up of the underlying business.

### **Asbestos and Environmental:**

Stroock has represented cedents and reinsurers in losses emanating from asbestos and other toxic torts and environmental pollutants.

We have handled matters relating to challenges to allocation and application of trigger, as well as the application of asbestos exclusions. We have also represented clients in asbestos and mass tort matters involving alleged failures to provide adequate loss information.

**Workers Compensation:** Stroock has handled disputes arising out of reinsurance of workers compensation, including statutory workers compensation, excess workers compensation, accident and health and workers compensation carve-out. We have also handled disputes arising between cedents and their reinsurers, pool members and fronting companies and pools and their agents. These disputes have addressed a variety of issues, including the scope of coverage, the allocation of losses and sunset and commutation provisions.

**Life:** Numerous dislocations in the life insurance industry have led to disagreements about underwriting practices, agent and broker behavior and the sale of life insurance to parties with no perceptible insurable interest. The separate reinsurance pipelines for components of universal life, including, most particularly, yearly renewable term contracts (YRT), have created

other controversies. Our attorneys have been continuously active in these disputes in recent years.

**Program Manager/MGA:** Stroock has handled disputes arising out of insurance and reinsurance business written by Managing General Agents (“MGA”) and Program Managers. We have represented ceding companies in arbitrations in which reinsurers alleged failure to properly monitor and supervise the conduct of MGAs and in disputes in which reinsurers alleged that business written by MGAs was not as represented. Stroock has also represented ceding companies in disputes against their MGAs and has successfully represented MGAs on claims of wrongful termination. In addition to representing clients in connection with disputes relating to MGA business, Stroock has provided transactional advice to clients on such issues as MGA agreements, rent-a-captive arrangements and the structuring of program business.

# Dispute Resolution and Counseling

## INSURANCE

Stroock's coverage litigation spans first and third party issues under primary and excess policies in the commercial and personal lines, property/casualty, and life insurance markets. Our work for insurers includes handling direct litigation with insureds over issues of coverage and bad faith involving underlying claims for environmental; toxic tort; financial guarantee; advertising; large losses in the oil & gas, utility and nuclear sectors; directors and officers; E&O; fidelity; and professional liability claims. We have been involved in litigating cases that created new law or established leading precedent favorable to insurers relating to a variety of issues. Stroock's litigation attorneys have also prosecuted a variety of fraud cases against insureds and third parties and recovered millions of dollars on insurers' behalf in cases involving fraudulent claims and embezzlement by agents and brokers.

**Handles major litigation and arbitrations in both spheres, including significant class actions and bad faith claims.**

Chambers USA

*Stroock has handled matters for insurers that include:*

- representation of national insurers in personal lines and commercial claims arising out of catastrophes (fires/earthquakes);
- prosecution of conspiracy, fraud, breach of duty and RICO actions against insureds and third parties selling phony workers compensation insurance to purported insureds;
- representation of insurers in construction defect coverage litigation;
- representation of insurers in defending claims asserted in connection with bankruptcy court proceedings;
- providing advice and counsel to insurers with respect to the investigation of claims and coverage decisions;
- providing advice to national and international insurers and brokers regarding policy construction and wording;
- representation of mutual insurers in major losses in the oil & gas, utility and nuclear sectors;
- representation of insurance agents and brokers in errors and omissions claims; and
- providing advice and counsel to insurers with respect to takeovers and contests for control.

We also have defended insureds from claims under various types of policies. Stroock has defended corporations, directors and officers against claims brought by shareholders, creditors and governmental entities. We also have substantial experience defending professionals such as accountants, lawyers and architects and we are certified as panel counsel for several large insurers.

# Dispute Resolution and Counseling

## **BROKER REPRESENTATION/DEFENSE**

Leading insurance and reinsurance brokers rely on Stroock to both handle and proactively avoid disputes. Stroock's insurance and reinsurance litigators have routinely handled matters on behalf of insurance and reinsurance brokers, as well as insurance companies in their dealings with brokers. Stroock has also represented insurance brokers in contentious regulatory matters in conjunction with our insurance regulatory partners.

Stroock has defended insurance and reinsurance brokers against claims brought by clients for alleged errors and omissions. Our attorneys have also represented insurers in disputes with reinsurance brokers relating to reinsurance coverage obtained by the brokers on behalf of the cedent. Stroock has brought claims on behalf of cedents against reinsurance brokers relating to (1) failure to obtain proper coverage, (2) failure to advise the insurer as to the best coverage and (3) mishandling of the cedent's account.

Here is what our clients say about our attorneys, according to Chambers USA:

**... very creative and really good at strategy.**

**... very good at understanding our business and a bulldog with adversaries.**

**... good turnaround time and practical approach.**

# About Stroock

For more than 140 years, we have been firmly committed to helping our clients achieve their strategic business goals. Every day, we partner with our clients to deliver exceptional advice and achieve outcomes that support their objectives. We are a team of transactional, regulatory and litigation lawyers who work with some of the world's most prominent organizations. We serve leading financial institutions, multinational corporations, investment funds and entrepreneurs throughout the United States and abroad from our four offices—New York, Los Angeles, Miami and Washington, D.C.

## Stroock's services include:

- Corporate and Private Funds
- Financial Restructuring
- Financial Services Litigation, Regulation and Enforcement
- General Litigation and Government Affairs
- Insurance & Reinsurance
- Intellectual Property/ Media and Entertainment
- Real Estate
- Regulatory, Tax and Private Client Services

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