

# PROFILE

## Excess, Surplus Lines, and Reinsurance Committee: Among Experienced and Diverse Professionals, Find Great Friends

By Michael A. Kotula

The Excess, Surplus Lines, and Reinsurance (ESLR) Committee serves members in three important constituencies: insurance coverage practitioners handling a wide variety of matters under umbrella and excess insurance policies, insurance coverage and regulatory practitioners handling matters in the surplus lines insurance market, and reinsurance practitioners who deal with transactional and dispute-related reinsurance matters. Our focus in these areas complements the work of several other TIPS committees, including Insurance Coverage Litigation (ICLC), Insurance Regulation, Dispute Resolution, and Business Litigation, among others. Joining ESLR will make you a part of a large national network of professionals who practice in these areas and offer you guidance on current and emerging issues from attorneys who are experts in their fields. Membership in TIPS means you can join three committees

**Michael A. Kotula**, chair of the TIPS Excess, Surplus Lines, and Reinsurance Committee, is a partner with Rivkin Radler LLP in the Insurance Coverage & Litigation group in the firm's Uniondale (Long Island), New York, office, where he represents insurance companies in insurance coverage disputes. He can be reached at michael.kotula@rivkin.com.

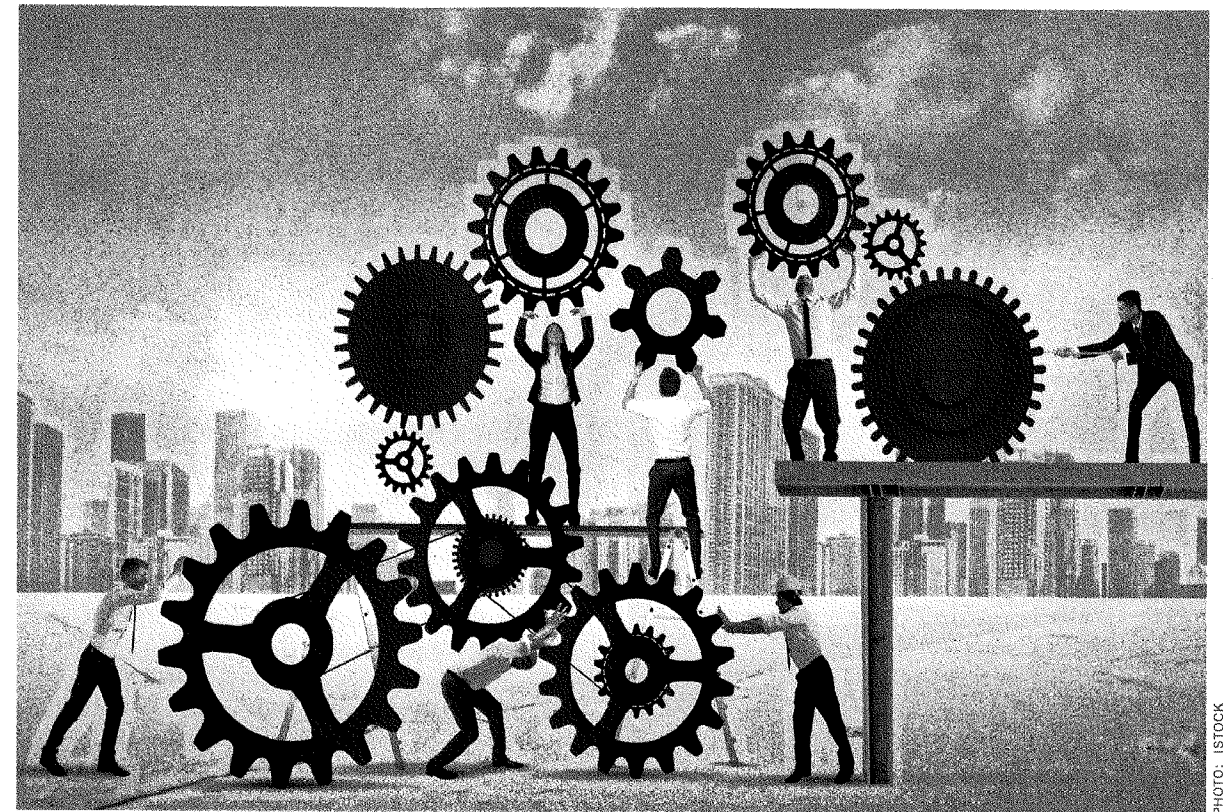
at no extra cost, so membership in ESLR can complement your membership in at least two other committees.

Excess insurance affords coverage for loss or damage in excess of a stated amount or claims for large amounts that are often greater than the total primary insurance available. In the excess insurance arena, ESLR brings together experienced and accomplished attorneys who handle a diverse array of coverage matters, including environmental pollution, asbestos, toxic torts, products liability, construction defects, workplace accidents, securities, employment issues, and catastrophes, among others. Umbrella and excess insurance policies present a number of coverage issues, such as how to treat self-insured retentions or deductibles and fronting policies, allocation, priority of coverage, duty to defend or reimburse defense costs, whether underlying insurance has been properly exhausted, drop-down due to insolvent underlying insurance, late notice, and rights of equitable subrogation or contribution. ESLR focuses on insurance coverage issues that directly bear on umbrella and excess insurance policies. For an insurance coverage attorney, membership in ESLR offers specialized resources and insights pertaining to complex coverage matters affecting your clients or your employers.

Surplus lines insurance, or non-admitted insurance, is a growing

part of the insurance marketplace offering the flexibility to write policies for risks using non-standard terms or pricing. Risks addressed in the surplus lines market may be non-standard risks that involve unusual operations or heightened exposures, or require higher limits of insurance, for which the admitted insurance market may not have insurance products, or for which product pricing is less flexible than in the surplus lines market. The surplus lines market is often on the cutting edge, providing insurance solutions for hard-to-place risks and specialty insurance for risks that may otherwise not be insured but for the existence of surplus lines insurance policies. ESLR brings together surplus lines and insurance regulation professionals who follow important regulatory developments at the state and national levels. Knowledge of surplus lines issues is invaluable to insurance coverage attorneys who encounter insurance policies placed in the surplus lines market.

Reinsurance is a form of risk transfer where an insurer (the ceding insurer) transfers some or all of a risk under a policy (facultative reinsurance) or a group of policies (treaty reinsurance) to another insurer (the reinsurer). Reinsurance can be assumptive reinsurance, by which the reinsurer steps into the shoes of the ceding insurer under the policy and handles and pays claims presented under the policy. Or,



reinsurance may be indemnity reinsurance, under which the reinsurer agrees to indemnify or reimburse the ceding insurer for some or all of the costs it incurs and pays. ESLR provides a community for reinsurance practitioners who are involved in transactional reinsurance, helping to set up reinsurance solutions, or attorneys who represent ceding insurers or reinsurers in reinsurance disputes in arbitration or litigation.

The ESLR Committee sponsors and cosponsors CLE programs, including a 2013 program featuring keynote speaker Kenneth Feinberg that addressed claim resolution for matters such as the Boston bombing attack. The committee regularly cosponsors insurance coverage presentations with the ICLC. ESLR is proud to be presenting a program at the ABA's London Magna Carta program in June titled "Adapting to an Ever-Changing and Risky World of Tort Liability" that will offer a stellar panel of speakers from the insurance industry and academia that includes the current general counsel of Lloyd's of London. ESLR provides scholarly writing

on developments in excess, surplus lines, and reinsurance in annual survey articles in the *Tort Trial & Insurance Practice Law Journal*, ESLR's newsletters, and other publications, such as the ABA/TIPS book *The Reference Handbook on the Commercial General Liability Policy, Second Edition*.

Among the great strengths of ESLR are its many in-house members, who represent important roles as in-house counsel for insurers and reinsurers, and the committee's cadre of highly experienced professionals, who have been involved in the committee's leadership and regularly participate in committee events. We welcome attorneys who represent policyholders and insurers or reinsurers, and the committee includes members who represent different perspectives in these matters.

ESLR has a demonstrated commitment to diversity and public service, winning TIPS awards for diversity and cosponsoring projects with the TIPS Law and Public Service Committee in connection with the Section's quarterly meetings. We offer TIPS members a fast

track to leadership and excellent opportunities to become actively involved in the work of a general committee, contribute scholarly work, provide updates to members, and speak on these issues. ESLR is proud to count itself among the most approachable and collegial of TIPS's general committees. We frequently host social events at the Section's quarterly meetings, and through our countless interactions and overlap with other general committees, our members are regularly invited to participate in social events hosted by other committees.

ESLR always welcomes new faces and new ideas. If you are interested in becoming involved with ESLR, or if you plan to attend a TIPS quarterly meeting and would like to be included in our social events, please reach out to me at michael.kotula@rivkin.com, or to our incoming committee chair, Elizabeth Kniffen, at ekniffen@zelle.com. We will be glad to include you in our gatherings and to discuss how you can quickly become involved in the work of our committee. In ESLR, you will find great professional colleagues and friends. ■