PLUS – Miami
August 30, 2017

Underwriting Considerations
• Initiated in 2014
• Started as a Money Laundering Probe
• Expanded to other areas such as “kickbacks”
• Petrobras becomes a headline by prosecutors over kickbacks by former Director at Petrobras
• The Operation continues to this day
Impact on Underwriting Decisions

• Underwriting Considerations
• Pricing changes
• Policy Terms and Conditions
• Capacity – Local and International
• Increase/Decrease in Demand for Insurance
Underwriting Considerations

- Geographic Location
- Country Specific
- Compliance Issues: Admitted/Licensed
- Reinsurance Capabilities in applicable
- Government Regulations
Impact on Pricing

- Operation Car Wash has increased pricing in general
- Factors include investigative costs, use of local adjusters
- General hesitation by capacity providers
• Increase use of Exclusions such as Bribery, Corruption, Commissions Exclusions
• Increase in sublimits for Defense Costs
• Review of “older policy forms” looking for latest/broadest Terms
Capacity

- Local Markets – Rejuvenated Interest
- Use of Reinsurance Markets- Increased Appetite
- International marketplace acceptance
More Companies are buying D&O Insurance
Particularly due to headline news
Private Companies
Public Companies
Quasi Governmental Agencies
Operation Car Wash & D&O Claims in Latin America

August 30, 2017

Alex Guillamont

Kennedys
What we will cover

- Background to Operation Car Wash
- Political situation in Brazil
- Corruption Scheme within Petrobras
- Odebrecht
- JBS–Bribery scandal
- Consequences of Operation Car Wash
• Operation Car Wash carried out by the Brazilian Federal Police.

• Initially, the focus was money laundering transactions. The scandal grew to encapsulate Brazil’s political and business leaders—even the president of the republic.

• Petrobras, several companies, and political parties have been implicated.

• The operation is still ongoing.
In August 2016, President Dilma Rousseff was impeached. Grounds for her impeachment: that she manipulated state funds in favour of her 2014 re-election campaign.

Michel Temer replaced Dilma as President, but recently he has also been directly implicated in the Car Wash investigations due to the testimony of JBS—a meatpacking company that signed a plea bargain agreement with the authorities; the attorney general has charged President Temer.

However, on 28 June 2017 the Federal Supreme Court (STF) ruled that in order to continue the investigation against Temer there should be approval by the Congress. On 2 August 2017, the Congress did not give its approval. The investigation is thus suspended until Temer’s term ends.

Ex-President Lula was found guilty of the first of five charges against him: that he had been given a beachfront apartment by engineering firm OAS in return for his help in winning contracts with Petrobras. Lula has been sentenced to nine and a half years in prison, but he will not be jailed until the outcome of an appeal.
How the scheme worked in Petrobras

- It has been alleged that the fraudulent scheme lasted for at least 10 years (2004-2014).

- Allegedly, a cartel was formed, in which Senior Executives of Petrobras participated.

- Several contracts were overcharged at 20%; 1-3% of that was paid to the senior executives of Petrobras.

- Part of the funds from the kickback scheme were used to finance political parties and political campaigns.
• In 2013, the Brazilian Auditing Committee (TCU) started a proceeding to investigate potential irregularities in the acquisition of the Pasadena Refinery in Texas, USA.

• In 2015, Paulo Roberto Costa (former Director of Petrobras), entered into a plea bargain agreement and confirmed that the acquisition of Pasadena yielded BRL 30m in bribe.

1. 2005
   - Astral Oil acquired 100% of the refinery for USD 42.5m

2. 2006
   - Petrobras acquired 50% for USD 360m

3. 2008
   - Astral Oil exercised its Put Option-forcing Petrobras to acquire Astral’s remaining shares.

4. 2012
   - Total value paid by Petrobras: USD 1.18 billion
US Class Actions

- Between 8 December 2014 and 7 January 2015, five separate class action were filed in the United States District Court—SDNY asserting substantially similar claims against Petrobras (violations of the Securities Act and the Exchange Act).
- On 17 February 2015, the Court consolidated these related cases under the name In re: Petrobras Securities Litigation.
- Between March 2015 and April 2017, a further 34 independent individual actions were brought in New York and around the country against Petrobras based on substantially similar allegations.
- Starting in late October 2016, Petrobras began to reach settlement agreements on a number of individual actions. As of August 2017, settlement agreements were reached on 20 of the 40 actions that encompass In re: Petrobras Securities Litigation. Petrobras has reserved an estimated USD 445 million to pay off these settlements.
- Throughout this time, Petrobras has claimed indemnification for defense costs and other financial losses that they believed to be covered by its D&O programme.
• The construction giant Odebrecht was one of the companies that formed the cartel.

• On 8 March 2016, Odebrecht's president Marcelo Odebrecht—one of Brazil’s most powerful and influential figures—was sentenced to 19 years imprisonment.

• In December 2016, Marcelo Odebrecht entered into a plea bargain with the Brazilian Public Prosecutor.

• Following his lead, 78 former Odebrecht executives entered into their own agreements with the Public Prosecutor.

• Odebrecht and Braskem as entities also signed a leniency agreement and have to pay USD 2.5 billion to the governments of Brazil, USA, and Switzerland.
JBS – Bribery Scandal

• Seven executives of the Brazilian meatpacker JBS have entered into a plea bargain agreement with the Federal Public Prosecutor.

• The agreement establishes the payment of a fine totalling BRL 225 million, as well as their cooperation.

• The contents of the plea bargain have not been disclosed, but an audio recording of Temer apparently proposing to bribe Cunha (former Senator) was leaked.

• JBS allegedly put money into two offshore bank accounts prior to the 2014 elections. By 2014, the combined balance of the accounts reached approximately USD 150 million and the funds were used to support the PT’s electoral campaign.
Operation Car Wash

- **1,765 proceedings filed**
- **279 international cooperation agreements**, 176 active agreements with 38 countries and 103 passive agreements with 28 countries.
- **158 plea bargain agreements**
- **10 leniency agreements**
- **65 criminal indictments** against 277 individuals.
- **33 criminal sentences** related to the following crimes: corruption; crimes against the financial system; criminal organization, money laundering.
- **Total amount recovered: BRL 38.1 billion**, including fines; BRL 3.2 billion was recovered through the plea bargain agreements.
- For the first time in Brazil, several politicians and high level executives are facing prison sentences.