

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, CHANCERY DIVISION**

**IN THE MATTER OF THE REHABILITATION            )  
OF AMERICAN MUTUAL REINSURANCE            )  
COMPANY    )       NO. 88 CH 1595**

**APPLICATION FOR AN ORDER APPROVING THE FINAL DISTRIBUTION  
OF ESTATE ASSETS, CONSISTING OF THE PAYMENT OF ACCRUED  
INTEREST ON SURPLUS DRAFTS AND THE FIFTH AND  
FINAL PREPAYMENT OF OUTSTANDING SURPLUS DRAFTS**

Michael T. McRaith, Illinois Director of Insurance (the "Director"), in his capacity as statutory and court-affirmed Rehabilitator (the "Rehabilitator") of American Mutual Reinsurance Company ("Amreco"), hereby applies to this Court for approval of the final distribution of estate assets as follows: the payment of accrued interest on all surplus drafts for the period of December 1, 2008 through September 4, 2009, in the amount of \$634,574, and the fifth and final prepayment on the principal amount of the outstanding Surplus Drafts at the rate of 53.69866%, in the amount of \$89,341,606<sup>1</sup> (collectively, the "Final Distribution"), and in support of his application (the "Application"), the Rehabilitator states as follows:

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1. The proposed dividend rate of 53.69866% is to be applied against an asset base of \$89,446,048.90. The amount of the final distribution, however, is \$89,341,606. The difference results from a 1993 settlement agreement between Amreco and Employers Insurance of Wausau a Mutual Company ("Employers"), pursuant to which Employers agreed to the forfeiture of 50% of all future cash redemptions that may be made on two Surplus Drafts issued to it: Surplus Draft Nos. 11 and 65. This results in a \$104,442.90 forfeiture by Employers.

**BACKGROUND**

The Director is the duly authorized Rehabilitator of Amreco by virtue of the statutes of the State of Illinois and pursuant to the Order of Rehabilitation entered in this cause on February 22, 1988.

The February 22, 1988 rehabilitation order directed the Rehabilitator to take immediate possession and control of the property, assets, business, and affairs of Amreco pursuant to the provisions of Article XIII of the Code, 215 ILCS 5/187 - 5/221.

On September 8, 1988, this Court approved and entered the Amended Plan of Rehabilitation for American Mutual Reinsurance Company (the "Amended Plan"). On December 21, 2001, this Court approved and entered the Second Amended Plan of Rehabilitation for American Mutual Reinsurance Company (the "Second Amended Plan").

All timely filed proofs of claim submitted by Treaty Holders have been fixed in value and all allowed claims have been paid in full pursuant to the provisions of the Amended and Second Amended Plans (*i.e.*, in cash and Surplus Drafts). When the Amended Plan was approved in September of 1988, the original formula (or proration of cash to Surplus Draft) for the payment of claims was 37.5% cash and 62.5% Surplus Draft. Subsequently, on four occasions this Court has entered orders approving the Rehabilitator's recommendations for changing the payment formula and increasing the proration of cash to Surplus Draft, as follows: (1) in 1990 the payment formula was changed to 41.25% in cash and 58.75% in Surplus Drafts; (2) in 1994 the payment formula was changed to 46.25% in cash and 53.75% in Surplus Drafts; (3) in 1997 the payment formula was changed to 49.25% in cash and 50.75% in Surplus Drafts; and (4)

in 2004 the payment formula was changed to 60.00% in cash and 40.00% in Surplus Drafts. Each time that this Court has entered an order approving an increase in the cash portion of the payment formula, it has also approved the Rehabilitator's corresponding request for a partial redemption of all outstanding Surplus Drafts (*i.e.*, to make a partial prepayment to Surplus Draft holders).

As of November 15, 2005, the last timely filed claim asserted against Amreco's assets was paid in accordance with Part F of the Second Amended Plan. The Rehabilitator is now prepared to make a fifth and final prepayment to the Surplus Draft holders in accordance with Part G of the Second Amended Plan.

#### **A. GENERAL OVERVIEW**

Amreco was a mutual reinsurance company, organized and operated under the laws of the State of Illinois, with offices located in Chicago, Illinois. From its inception in 1941, Amreco operated exclusively as a reinsurance company; that is, Amreco never sold insurance directly to the public, but provided only reinsurance to other insurance companies (the "Treaty Holders"). Those insurance companies "ceded" or transferred to Amreco a portion of the risks they had underwritten or the losses they had agreed to pay through their own policies. Amreco, in turn, "retroceded" or transferred a portion of the risks or losses it assumed from its reinsureds to other insurance and reinsurance companies, which often were organized into groups or "pools."

Amreco experienced financial difficulties. When it was unable to resolve them, the Director on February 22, 1988 filed a verified complaint for Amreco's rehabilitation, pursuant to Section 192(3) of the Illinois Insurance Code, 215 ILCS 5/192(3). On the

same date, the Court entered the requested order of rehabilitation instructing the Director, as Rehabilitator, to take immediate possession and control of the property, assets, business, and affairs of Amreco. Thereafter, the Amended Plan Of Rehabilitation was circulated to all of Amreco's debtors and creditors, and was approved by the Court on September 6, 1988.

The Director continually monitors the status of Amreco's financial affairs, including its assumed books of business and assets. In approximately late 2000, the Director determined that it would be in the best interest of Amreco's creditors, the company and the public to accelerate the winding up of the estate by expediting the resolution of the company's liabilities and to establish a plan for the final fixing of claims. Before filing a petition for approval of a second amended plan of rehabilitation, the Director notified all claimants of a voluntary commutation program whereby their claims could be fixed by agreement for six (6) months. The Director further advised that those companies choosing not to commute would have their claims fixed pursuant to procedures presented to this Court subsequent to the end of the voluntary commutation period. Thereafter, the Second Amended Plan Of Rehabilitation was filed with the Court and circulated to all of Amreco's debtors and creditors pursuant to procedures for notice, comment and hearing recommended by the Rehabilitator and approved by the Court.

Notice of the proposed Second Amended Plan was provided to 420 Treaty Holders, 120 pool participants and over 150 retrocessionaires. Pursuant to the Court's May 15, 2001 order approving the form of notice, persons receiving notice were given 30 days in which to serve objections on the Rehabilitator (May 31, 2001 to June 30, 2001). Included with the form of notice approved by this Court was a copy of the proposed

Second Amended Plan. Of the approximately 690 persons provided with notice of the Second Amended Plan, only 2 affiliated Treaty Holders objected. Following the resolution of the joint objections of these affiliated entities, the Second Amended Plan was approved by this Court without further objection on December 21, 2001.

During the pendency of the rehabilitation plans, Amreco has proceeded with the evaluation, fixing and quarterly payment of assumed reinsurance claims (along with the collection of the resulting reinsurance recoverables due Amreco from its pool and retrocessional reinsurers). As specified in both the Amended and Second Amended Plans, all claim payments have been paid partially in cash and partially by way of a promissory note referred to as a "surplus draft" ("Surplus Drafts"). Pursuant to sections 6.05 and 7.02 of the Second Amended Plan<sup>2</sup>, Amreco's payment in cash and Surplus Draft constitutes full satisfaction of Amreco's obligation.

The 1988 Amended Plan anticipated the run-off of Amreco's assumed reinsurance liabilities until 2018. Nevertheless, due to uncertainties concerning the development of incurred but not reported claims, as well as the economic environment in which Amreco's assets would be invested from time to time, the Surplus Drafts do not mature until 2041.

Since November 2005, all of Amreco's assumed liabilities have been paid in full (in cash and Surplus Drafts). Nevertheless, Amreco has remaining liabilities of \$166,570,366 arising under the Surplus Drafts issued during the course of the rehabilitation, plus interest accrued on the Surplus Drafts from December 1, 2008 to date, at the annual rate of 0.5%.

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2. The corresponding provisions of the Amended Plan were sections 7.7 and 8.3.

**B. CLAIMS PAID UNDER THE AMENDED PLANS OF REHABILITATION**

Amreco made its first payments on claims submitted under the Amended Plan in February of 1989. Since then, the Rehabilitator continued to process and make payments on claims received on PCS forms or final claim update submissions, and pursuant to commutations. During the course of the rehabilitation, Amreco processed \$512,876,911 in claims.

Processed claims totaling \$111,148,206.14 were settled indirectly; for example, by way of offsets for balances due from pool participant, earned premium, and the drawdown on security held by Treaty Holders. The net balance paid by Amreco is \$401,728,704.86. With respect to the net balance paid, \$166,637,427.88<sup>3</sup> has been paid in Surplus Drafts and \$235,091,276.98 has been paid in cash.<sup>4</sup>

**REHABILITATOR'S PROPOSAL FOR  
A FIFTH AND FINAL PREPAYMENT**

**A. REHABILITATOR'S PROCEDURES FOR DISTRIBUTION AND CLOSING OF THE ESTATE**

On May 22, 2007, the Rehabilitator filed with this Court his proposed procedure for final distribution and closing of the estate. Following a period of notice, comment and hearing, including the filing of objections and oral argument heard thereon, on

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3. Amreco's remaining liability under the Surplus drafts is \$166,570,365.83. This is \$67,062.05 less than the net balance of claims paid by way of Surplus Drafts (\$166,637,427.88) due to adjustments made by Ohio Reinsurance Corporation (liquidated as Oil and Gas Insurance Company) and Employers Casualty Company, In Receivership.

4. The proration of cash to Surplus Drafts reflects both the amounts of all original payments of cash on claims plus the cash paid as a result of each of the four prepayments that have been made on Surplus Drafts.

December 18, 2007 this Court entered an order approving the Rehabilitator's final plan for distribution and closing of the estate. A subsequently filed appeal of the denial of the objections was recently settled and dismissed by orders of the Illinois Appellate Court entered on August 12, 2009 upon motions filed by the appellants.

The Rehabilitator's final plan for distribution and closing of the estate, as approved by this Court, consists of three steps:

A. When the Rehabilitator makes the determination, on a cost/benefits basis, it is no longer economically feasible to pursue the collection of outstanding reinsurance recoverables, he shall petition the Court for approval of the payment of accrued interest on all outstanding surplus drafts. He will also petition to establish a final dividend rate for the issuance of a final prepayment to be distributed on a *pro rata* basis on all outstanding surplus drafts, including those EMLICO received in its commutation (collectively, "The Final Distribution").

B. At the same time as he petitions for approval of the establishment of a final dividend rate, the Rehabilitator shall petition the Court for approval of the retention of a reserve for purposes of paying future administrative and post-closing expenses.

C. Subsequent to distributing The Final Distribution, pursuant to Section 13.04 of the Second Amended Plan the Rehabilitator shall submit to the Court a final report and petition the Court for AMRECO's dissolution, and for the termination of these rehabilitation proceedings.

With respect to Step A, the Rehabilitator determined that it was no longer economically feasible to pursue the collection of outstanding reinsurance recoverables. He then published an Invitation For Bid for purposes of soliciting bids for the purchase of the remaining reinsurance recoverables and to set a fair market price for those assets. This Court heard a petition for approval of the award of bid on Friday, August 21, 2009 and an order approving the award of bid to purchase those receivables was entered on that date and the assignment and sale of these receivables will be completed prior to the

distribution. With this Application, the Rehabilitator is seeking to complete Step A of the final plan for distribution and closing of the estate previously approved by this Court.

**B. AUTHORITY FOR REHABILITATOR'S ISSUANCE OF A FIFTH PREPAYMENT**

Pursuant to powers previously conferred by this Court, as described in greater detail below, the Rehabilitator intends to make the following distribution of general assets, by way of a fifth and final prepayment on the principal amount of the outstanding Surplus Drafts, in accordance with Section 13.04 and Part G of the Second Amended Plan.

A Surplus Draft is attached as Exhibit A to both the Amended and Second Amended Plans (see section 8.1 of the Amended Plan and section 7.01 (Part G) of the Second Amended Plan). The language of the Surplus Drafts, as well as both Plans, was approved by this Court, with prior notice to, among others, all Treaty Holders and Surplus Draft holders. The express terms of the Surplus Drafts provide that Amreco may prepay the drafts, in whole or in part, at any time and from time to time, in its sole discretion. This Court approved these terms when it approved the Amended Plan and then the Second Amended Plan thirteen years later.

As Section 2.04 of the Surplus Drafts states,

2.04 **Prepayments**: Any part or all of the indebtedness of Maker outstanding hereunder may be prepaid at any time or times, in the sole discretion of Maker, without the payment of any additional interest or penalty in connection therewith. Any prepayments shall be made ratably to the Payee under this Surplus Draft and the Payee under all other Surplus Drafts then outstanding, irrespective of series of issuance, in the ratio which:

- (a) the amount of interest accrued on this Surplus Draft bears to the amount of interest accrued on all Drafts then outstanding, and, if there is

any accrued interest then payable by Maker under any Surplus Drafts then outstanding, to the extent that any prepayment represents interest; or

(b) if there is no accrued interest then due to the holder of any Surplus Draft, the Principal Sum of this Surplus Draft bears to the Principal Sum of all Surplus Drafts then outstanding; provided, however, in its sole discretion, the Maker shall have the right to prepay in full, with approval of the Court, any Surplus Drafts then outstanding with a minimal Principal Sum then outstanding.

Acting pursuant to the authority previously granted him by this Court's prior approval of section 2.04 of the Surplus Drafts (in both 1988 and again in 2001); the Rehabilitator now intends to make a fifth and final prepayment as described below. For the reasons set forth below, the Rehabilitator asks that this Court enter an Order further approving this specific exercise of his previously approved power.

### **C. CURRENT STATUS OF CASH AND INVESTED ASSETS, AND LIABILITIES**

#### **i. Assets**

As of August 19, 2009, Amreco has cash and invested assets in the amount of \$92,995,534.<sup>5</sup> Prior to issuing the Final Distribution sought in this Application, the Rehabilitator anticipates the receipt of an additional \$308,736, resulting in total assets of \$93,304,270. See Exhibit 1 captioned "Summary of Proposed Distribution.

#### **ii. Liabilities**

Liabilities against these assets include: (a) \$252,039 for the costs of administering the estate (those that have been incurred but not yet paid (estimated at

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5. In the most recently filed Statement of Changes in cash and Invested Assets, for the period April 1, 2009 through July 31, 2009, the Rehabilitator reported a market value of \$88,879,108 for Amreco's unencumbered cash and invested assets.

\$160,198) plus post-closing expenses to be incurred (estimated at \$91,841)); (b) \$240,000 in estimated federal taxes to be paid by September 15, 2009 representing income tax due for 2009; (c) \$1,675,000 settlement payment to Guaranty Fund Certificate Note Holders; (d) \$1,161,051 in common account quota share recoveries collected for the benefit of Amreco's pool participants; (e) \$634,574 in annual interest accrued, without compounding, at the rate of 0.5% from December 1, 2008 through September 4, 2009; and (5) \$166,570,366 in Surplus Drafts. *See Exhibit 1.*

**D. ACCRUED INTEREST**

The terms of the Surplus Drafts require that any [pre]payment must include the payment of accrued interest. Section 2.5 of the Surplus Drafts states as follows,

0.1 **Application of Payments:** All payments hereunder, however designated by the party making same, shall be applied in the following order of priority: (a) first, to accrued interest and (b) next, to the unpaid balance of the Principal Sum.

In an order entered on January 22, 2009, this Court approved the accrual of interest on outstanding Surplus Drafts at the rate of 0.5%, without compounding, for the period December 1, 2008 through November 30, 2009. Concurrent with the fifth and final prepayment, the Rehabilitator proposes paying accrued interest for the period December 1, 2008 through September 4, 2009. The proposed payment of interest will result in an aggregate interest payment of \$634,574. *See Exhibit 1.*

**E. THE PROPOSED FIFTH AND FINAL PREPAYMENT**

The Rehabilitator is requesting the entry of an order authorizing to him to make a final distribution of estate assets consisting of a fifth and final prepayment on the

principal amount of the outstanding Surplus Drafts. After reducing the Amreco's cash and invested assets in the amounts identified in Section C, above, Amreco will have \$89,341,606 available for the proposed final distribution. Accordingly, the Rehabilitator is recommending that a fifth and final prepayment be made on the principal amount of the outstanding Surplus Drafts at the rate of 53.69866%. The proposed fifth and final prepayment rate was determined as follows:

#### ASSETS

Assets available for prepayment of the Outstanding Surplus Drafts	\$89,446,048.90 <sup>6</sup>
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#### LIABILITIES

Surplus Drafts	\$166,570,365.83
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#### PROPOSED PREPAYMENT RATE

Assets available for prepayment of the Outstanding Surplus Drafts ÷ Surplus  
Drafts = **Dividend rate**

$\$89,446,048.90 \div \$166,570,365.83 = 53.69866\%$

See Exhibit 1.

Accordingly, the Rehabilitator requests that this Court enter an Order approving the final distribution of estate assets as follows:


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6. See footnote 1.

1. Approving the Rehabilitator's payment of interest, for the period December 1, 2008 through September 4, 2009, on the outstanding amount of all Surplus Drafts at the rate of 0.5%, without compounding, said payment resulting in an aggregate payment of \$634,574;
2. Approving the fifth and final prepayment on the principal amount of the outstanding Surplus Drafts on a prorated basis at the rate of 53.69866%, said prepayment of principal resulting in an aggregate payment of \$89,341,606;
3. The 53.69866% fifth and final prepayment on the principal amount of the outstanding Surplus Drafts shall constitute a full and final settlement of Amreco's obligations on said Surplus Drafts; and
4. Approving the Rehabilitator's retention of \$492,039 for outstanding and future administrative expenses, incurred and to be incurred, and estimated tax liabilities as set forth in Section C(ii)(a)-(b), above.

Respectfully submitted,

MICHAEL T. McRAITH  
Director of Insurance for the State of  
Illinois, as Rehabilitator of American  
Mutual Reinsurance Company

BY:   
One of his attorneys

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AMERICAN MUTUAL REINSURANCE COMPANY, IN REHABILITATION  
SUMMARY OF PROPOSED DISTRIBUTIONS  
SEPTEMBER 2009

CASH & INVESTED ASSETS @ 8/19/09		92,995,534
<u>PLUS FUTURE RECEIPTS</u>		
PRO SOLUTIONS	300,750	
INTEREST INCOME EARNED TO 9/03/09	3,164	
MUTILATED CHECK RETURNED TO PAYEE FOR REPLACEMENT	4,822	
TOTAL FUTURE RECEIPTS		<u>308,736</u>
SUBTOTAL		<u>93,304,270</u>
<u>LESS FUTURE DISBURSEMENTS</u>		
ESTIMATED RECEIVER ADMINISTRATIVE EXPENSES TO 9/15/09	160,198	
DISTRIBUTION TO GUARANTY FUND CERTIFICATE NOTE HOLDERS	1,675,000	
DISTRIBUTION TO POOL PARTICIPANTS	1,161,051	
INTEREST DUE SURPLUS DRAFT HOLDERS (12/01/09 - 09/04/09)	634,574	
FEDERAL INCOME TAX FOR 2009	240,000	
TOTAL FUTURE DISBURSEMENTS		<u>3,870,823</u>
SUBTOTAL		<u>89,433,447</u>
LESS RECEIVER POST CLOSING ADMINISTRATIVE EXPENSE RESERVE		<u>91,841</u>
SUBTOTAL		<u>89,341,606</u>
PLUS WAUSAU FORFEITURE FUNDS		<u>104,443</u>
ASSETS AVAILABLE FOR SURPLUS DRAFT HOLDER DISTRIBUTION		<u>89,446,049</u>
<u>ASSETS AVAILABLE FOR SURPLUS DRAFT HOLDER DISTRIBUTION</u>		<u>89,446,049</u>
SURPLUS DRAFTS OUTSTANDING		166,570,366
<u>DIVIDEND RATE FOR SURPLUS DRAFTS</u>		<u>53.69866%</u>



IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, CHANCERY DIVISION

IN THE MATTER OF THE REHABILITATION  
OF AMERICAN MUTUAL REINSURANCE  
COMPANY

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NO. 88 CH 1595

FILED-1  
2009 AUG 24 PM 2:51  
CIRCUIT COURT OF COOK  
COUNTY, ILLINOIS  
CHANCERY DIV.  
CLERK

NOTICE OF MOTION

To: See Attached Service List  
\_\_\_\_\_  
\_\_\_\_\_

On September, 2, 2009, at 10:00 a.m. or as soon thereafter as counsel  
may be heard, I shall appear before the Honorable Mary Ann Mason or any Judge sitting in that  
Judge's stead, in the courtroom usually occupied by him/her, located in room 2510 of the Richard J. Daley Center,  
50 W. Washington Street, Chicago, Illinois, and present  
the attached petition at which time you may appear.

Name Daniel A. Guberman Atty. No. 16819  
Address 222 Merchandise Mart Plaza, Suite 1450 Attorney for Plaintiff/Rehabilitator  
Telephone 312-836-9500 City/Zip Chicago, IL 60654

PROOF OF SERVICE BY DELIVERY

I, \_\_\_\_\_, the attorney/non attorney\* certify that on the \_\_\_\_\_ day of  
(\*strike one)  
\_\_\_\_\_, I served this notice by delivering a copy personally to each person to whom it is directed.

Under penalties as provided by law pursuant to 735 ILCS 5/1-109

Date \_\_\_\_\_

I certify that the statements set forth herein are true and correct.

Signature/Certification \_\_\_\_\_

PROOF OF SERVICE BY MAIL

I, Richard C. Abron, the non attorney\* certify that I served this notice by mailing  
(\*strike one)  
a copy to each party listed at their respective addresses  
(address on envelope)

and depositing the same in the U.S. Mail at Merchandise Mart Plaza, Suite 1450, Chicago, Illinois  
(place of mailing)

at, or before, 4:30 p.m. on the 24th day of August, 2009, with proper postage prepaid.

Under penalties as provided by law pursuant to 735 ILCS 5/1-109

Date August 24, 2009

I certify that the statements set forth herein are true and correct.

Richard C. Abron  
Signature/Certification

NOTE: If more than one person served by mail, additional proof of service may be on the reverse side.

Copy received \_\_\_\_\_, at \_\_\_\_\_ a.m./p.m.

**SERVICE LIST**

**AMERICAN MUTUAL REINSURANCE COMPANY**

**(No. 88 CH 01595)**

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**COURTESY COPY TO:**

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