

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

PEOPLE OF THE STATE OF ILLINOIS,
ex rel., JOHN E. WASHBURN, DIRECTOR
OF INSURANCE OF THE STATE OF ILLINOIS,

Plaintiffs,

v.

AMERICAN MUTUAL REINSURANCE COMPANY,
an Illinois domestic mutual property,
casualty and fire company,

Defendant.

No. 88 CH 1595

**AMENDED PLAN OF REHABILITATION FOR
AMERICAN MUTUAL REINSURANCE COMPANY**

JOHN E. WASHBURN, Director of Insurance of the State of Illinois, as Rehabilitator of AMERICAN MUTUAL REINSURANCE COMPANY ("Amreco"), pursuant to Section 192(3) of the Illinois Insurance Code (Ill. Rev. Stat. ch. 73, ¶ 804(3) (1987)), proposes the following Amended Plan of Rehabilitation ("Plan"):

Part A. Definitions

1.01 The following definitions apply in this Plan:

- (a) **Rehabilitator**: The Director of Insurance of the State of Illinois ("Director"), acting only in his capacity as Rehabilitator of Amreco.
- (b) **Supervising Court**: That judge of the Circuit Court of Cook County, Illinois, County Department, Chancery Division, having jurisdiction over the rehabilitation of Amreco.
- (c) **Reinsurance Agreement**: Any written agreement, contract, treaty, certificate or other document establishing or purporting to establish rights or obligations of reinsurance.
- (d) **Cedants**: Insurance companies and entities who have ceded liabilities or obligations to Amreco through Reinsurance Agreements, as well as such insurance companies' parents, affiliates, divisions, subsidiaries, predecessors, successors and assigns, and their past, present and future officers, directors, employees, attorneys, agents and representatives.

- (e) **Reinsurers:** Insurance companies and entities who have assumed liabilities or obligations of Amreco through Reinsurance Agreements, as well as such companies and entities' parents, affiliates, divisions, subsidiaries, predecessors, successors and assigns, and their past, present and future officers, directors, employees, attorneys, agents and representatives.
- (f) **Creditors:** Any person or entity to whom Amreco is or may be indebted for any obligation other than pursuant to the terms of a Reinsurance Agreement, as well as such person or entity's parents, affiliates, divisions, subsidiaries, predecessors, successors and assigns, and their past, present and future officers, directors, employees, attorneys, agents and representatives.
- (g) **Order of Rehabilitation:** The order of rehabilitation entered by the Supervising Court on February 22, 1988.

Part B. Administration

- 2.01 The Rehabilitator shall pay out of Amreco's assets all costs and expenses of the administration of Amreco, including, but not limited to, salaries and employment related benefits of Amreco's employees, and all registration and licensure fees or taxes required by states in which Amreco is or has been registered or licensed to conduct business. The Rehabilitator shall report all such payments to the Supervising Court in an annual report of all receipts and disbursements of Amreco ("Annual Report").
- 2.02 From time to time the Rehabilitator may appoint or employ consultants, accountants, assistants and attorneys to assist him in the rehabilitation of Amreco and the implementation and effectuation of this Plan. The Rehabilitator shall pay the compensation of all such consultants, accountants, assistants and attorneys, as well as the compensation of the Rehabilitator's Special Deputy and staff, out of Amreco's assets, and shall report such payments to the Supervising Court in his Annual Report. The compensation of those attorneys the Rehabilitator employs to counsel and represent him as his "senior" attorneys shall be paid out of Amreco's assets only upon the entry of an order of the Supervising Court approving such payments. Any compensation the Rehabilitator proposes to pay

accountants retained to perform Amreco's annual audit pursuant to Section 200 of the Illinois Insurance Code (Ill. Rev. Stat. ch. 73. ¶ 812) shall be approved by the Supervising Court, paid by the Rehabilitator out of Amreco's assets and reported to the Supervising Court in the Rehabilitator's Annual Report.

2.03 The Rehabilitator in his discretion may compromise and settle, in writing, all doubtful, disputed or uncollectible debts or claims owing to or by Amreco, and shall report the same to the Supervising Court in his Annual Report. Any debt or claim having a separate value of \$250,000.00 or more which the Rehabilitator deems should be compromised or settled in the best interests of Amreco and its Cedants, Reinsurers, Creditors and members, shall be submitted to the Supervising Court for its approval. Payment of any such compromised or settled debt or claim shall be made pursuant to Part G of this Plan.

2.04 The Rehabilitator may sell any of Amreco's assets to pay:

- (a) the costs and expenses of the administration of Amreco;
- (b) the compensation of his attorneys, senior attorneys, accountants, assistants, consultants, Special Deputy and staff; or
- (c) the obligations of Amreco as provided in this Plan.

2.05 The Rehabilitator shall report the sale of any of Amreco's assets to the Supervising Court in his Annual Report.

2.06 Upon the entry of this Plan by the Supervising Court, and throughout its pendency, Amreco shall not issue any policies of insurance, assume any additional reinsurance liabilities, nor issue any additional subordinated guaranty fund

surplus promissory notes within the meaning of Section 34.1 of the Illinois Insurance Code (Ill. Rev. Stat. ch. 73, ¶ 646.1).

Part C. Preferences

- 3.01 Any acts or omissions of the Rehabilitator in connection with the rehabilitation of Amreco shall not be construed or considered to be a preference within the meaning of Section 204 of the Illinois Insurance Code (Ill. Rev. Stat. ch. 73, ¶ 816), notwithstanding the fact that any such act or omission may cause a Cedant, Reinsurer or Creditor to receive a greater percentage of debt owed to or by Amreco than any other Cedant, Reinsurer or Creditor in the same class. Nothing in this Plan shall be deemed to cause any Cedant, Reinsurer or Creditor to have any greater right than that which they would have had if the Order of Rehabilitation or this Plan had not been entered.

Part D. Rights of Set-off and Counterclaim

- 4.01 Subject to the provisions of any Reinsurance Agreement or other written agreement between Amreco and its Cedants, Reinsurers or Creditors, and subject to the provisions of Section 206 of the Illinois Insurance Code (Ill. Rev. Stat. ch. 73, ¶ 818), any Cedant, Reinsurer or Creditor may assert any set-off or counterclaim against Amreco, provided the obligation sought to be set off or counterclaimed has been actually paid, (with the sole exception of any premium owed by Amreco to any Cedant or Reinsurer), and that the Rehabilitator has been given proper written notice of such set-off or counterclaim pursuant to Part F of this Plan.
- 4.02 Subject to the provisions of any Reinsurance Agreement or other written agreement between Amreco and its Cedants, Reinsurers or Creditors, and subject to the provisions of Section 206 of the Illinois Insurance Code (Ill. Rev. Stat. ch. 73, ¶ 818), Amreco may assert any set-off or counterclaim against any Cedant,

Reinsurer or Creditor, provided that, within a reasonable time, the Rehabilitator notifies the Cedant, Reinsurer or Creditor in writing of such set-off or counterclaim.

Part E. Secured Parties and Special Deposit Claims

- 5.01 Secured Cedants and Creditors may surrender their security and participate pro rata with unsecured Cedants and Creditors in any payments from Amreco's assets made by the Rehabilitator subsequent to such surrender. Any secured Cedant or Creditor who discharges any obligation owed to it by Amreco by resort to such security, but whose obligation owed by Amreco is not fully discharged by such resort to security shall be paid the balance of such obligation by the Rehabilitator pro rata with all unsecured Cedants and Creditors pursuant to the provisions of this Plan, provided that such secured Cedant or Creditor has given proper written notice of such balance to the Rehabilitator pursuant to Part F of this Plan.
- 5.02 Where, pursuant to another jurisdiction's requirements, Amreco has posted a special deposit, Cedants, Reinsurers and Creditors who receive any payment from such special deposit and whose obligations owed by Amreco are not fully discharged by such payment, shall be paid the balance of such obligations pursuant to Part G of this Plan only after all other Cedants, Reinsurers or Creditors not receiving any such special deposit payment have been paid percentages of their total obligation owed by Amreco equal to the percentage paid Cedants, Reinsurers or Creditors from such special deposit, provided that:
- (a) Within 45 days after the entry of this Plan by the Supervising Court, the Rehabilitator must receive from all Cedants, Reinsurers and Creditors who have applied for or have received a special deposit payment written reports, upon such forms and in such manner as the Rehabilitator shall direct, of the following:

- (i) the amount of such payment or application therefor;
 - (ii) the date such application or payment was made; and
 - (iii) the balance of Amreco's obligation to such Cedant, Reinsurer or Creditor; and
- (b) Throughout the pendency of this Plan, the Rehabilitator must receive from all Cedants, Reinsurers and Creditors who have applied for or received a special deposit payment written reports, upon such forms and in such manner as the Rehabilitator shall direct, of the following:
- (i) the amount of such payment or application therefor;
 - (ii) the date such application or payment was made; and
 - (iii) the balance of Amreco's obligation to such Cedant, Reinsurer or Creditor; and
- (c) Any report made pursuant to subparagraph (b) of this paragraph 5.02 must be received by the Rehabilitator within 90 days after the events described in subparagraph (b)(i), (ii) and (iii) have occurred.

Part F. Reporting By Cedants and Creditors

6.01 Within 45 days after the entry of this Plan by the Supervising Court, the Rehabilitator must receive from all Cedants written reports, upon such forms and in such manner as the Rehabilitator shall direct, of the following:

- (a) All losses and related loss adjustment expenses actually paid by the Cedant (or the reinsured of such Cedant, if applicable) on or before April 30, 1988, for any portion of which such Cedant asserts Amreco is obligated to reimburse it, but which Amreco has not paid, in whole or in part;
- (b) The amount and a description of any set-off or counterclaim that the Cedant has applied, is applying or intends to apply against those unreimbursed paid losses and related loss adjustment expenses contemplated by subparagraph (a) of this paragraph 6.01;
- (c) The amount of security held by or in favor of such Cedant, which the Cedant has applied, is applying or intends to apply against those unreimbursed paid losses and related loss adjustment expenses contemplated by subparagraph (a) of this paragraph 6.01, and any balance remaining after resort to such security;

- (d) The amount and a description of the source of all salvage or subrogation collected by such Cedant (or the reinsured of such Cedant, if applicable) on or before April 30, 1988, to all or part of which Amreco may be entitled; and
- (e) The amount and a description of all open and unpaid loss and related loss adjustment expense reserves maintained upon the Cedant's books and records on April 30, 1988, which such Cedant reasonably believes will result in a claim against Amreco, and a description of each such claim.

6.02 Throughout the pendency of this Plan, all Cedants shall report in writing to the Rehabilitator, upon such forms and in such manner as the Rehabilitator shall direct, the following:

- (a) All losses and related loss adjustment expenses which were actually paid by the Cedant (or the reinsured of such Cedant, if applicable), for any portion of which such Cedant asserts Amreco is obligated to reimburse it, but which Amreco has not paid, in whole or in part;
- (b) The amount and a description of any set-off or counterclaim the Cedant has applied, is applying or intends to apply against Amreco's share of those paid losses and related loss adjustment expenses contemplated by subparagraph (a) of this paragraph 6.02;
- (c) The amount of security held by or in favor of the Cedant which such Cedant has applied, is applying or intends to apply against those unreimbursed paid losses and related loss adjustment expenses contemplated in subparagraph (a) of this paragraph 6.02, and any balance remaining after resort to such security;
- (d) The amount and a description of the source of any salvage or subrogation collected by the Cedant, to all or a part of which Amreco may be entitled;
- (e) The amount and a description of all unpaid loss and related loss adjustment expense reserves established upon the books and records of the Cedant on or after May 1, 1988, which such Cedant reasonably believes will result in a claim against Amreco, and a description of each such claim; and
- (f) The amount and a description of all unpaid loss and related loss adjustment expense reserves previously reported to Amreco or the Rehabilitator which the Cedant has adjusted by increase or decrease upon its books or records on or after May 1, 1988.

6.03 All reports required by paragraph 6.02 of this Part F must be received by the Rehabilitator within 90 days after the events described in subparagraphs (a) through (f) of paragraph 6.02 of this Part F have occurred.

6.04 With the reports made pursuant to paragraphs 6.01 and 6.02 of this Part F, Cedants shall provide a certification by their Chief Operating Officer (or any other authorized officer), in such form as the Rehabilitator shall require, that the Cedant maintains and will maintain for at least 10 years in its own books and records appropriate evidence that the losses and related loss adjustment expenses reported to the Rehabilitator as paid in fact were paid. Such certification shall not operate to replace, abrogate or reduce the Rehabilitator's right to perform an audit of such books and records in accordance with the applicable Reinsurance Agreement between the certifying Cedant and Amreco.

6.05 Upon receiving any report required by paragraphs 6.01 and 6.02 of this Part F, the Rehabilitator shall either:

- (a) accept the same without further notice to the Cedant, in which case payment on such report shall be made pursuant to the provisions of Part G of this Plan; or
- (b) give written notice to the Cedant within a reasonable time that:
 - (i) The Rehabilitator must delay his acceptance of the report pending:
 - (A) receipt by the Rehabilitator of further documentation, explanation or proof to assist him in determining the merits of such report;
 - (B) the conclusion of an audit of such Cedant by the Rehabilitator; or
 - (C) the conclusion of an audit of such Cedant by a Reinsurer, which shall be conducted by such Reinsurer at its own expense with the assistance or participation of the Rehabilitator;

or,

- (ii) The Rehabilitator must reject the report, or any part thereof, and in writing state the reasons for his rejection. The Cedant may request in writing that the rejection be reconsidered by the Rehabilitator, stating the reasons why such reconsideration is warranted, supported by appropriate documentation. The Cedant shall transmit such request so that the Rehabilitator receives it within 30 days after the Cedant receives the notice of rejection by the Rehabilitator. The Rehabilitator shall notify the Cedant in writing of his decision on reconsideration within a reasonable time. If the Rehabilitator does not accept the report upon reconsideration, the Cedant within 30 days after receiving the Rehabilitator's decision on reconsideration either may:
 - (A) object to the Rehabilitator's rejection of the Cedant's report and present its objection in writing to the Supervising Court; or
 - (B) object to such rejection and avail itself of any contractual right to arbitration, any award from which shall be brought by the Cedant for confirmation to the Supervising Court within 30 days after such award is made final.

6.06 Within 45 days after the entry of this Plan by the Supervising Court, the Rehabilitator must receive from all Creditors written reports, upon such forms and in such manner as the Rehabilitator shall direct, of the following:

- (a) The amount and a description of any claim such Creditor has against Amreco;
- (b) The amount and a description of any set-off or counterclaim the Creditor has applied, is applying or intends to apply against any obligation such Creditor may owe to Amreco; and
- (c) The amount of security held by or in favor of the Creditor which such Creditor has applied, is applying or intends to apply against obligations it asserts Amreco may owe such Creditor, and any balance remaining after resort to such security.

6.07 Throughout the pendency of this Plan, all Creditors shall report in writing to the Rehabilitator, upon such forms and in such manner as the Rehabilitator shall direct, the following:

- (a) The amount and a description of any claim such Creditor has against Amreco;
- (b) The amount and a description of any set-off or counterclaim the Creditor has applied, is applying or intends to apply against any obligation such Creditor may owe to Amreco; and
- (c) The amount of security held by or in favor of the Creditor which such Creditor has applied, is applying or intends to apply against obligations it asserts Amreco may owe such Creditor, and any balance remaining after resort to such security.

6.08 All reports required by paragraph 6.07 of this Part F must be received by the Rehabilitator within 90 days after the events described in subparagraphs (a) through (c) of paragraph 6.07 of this Part F have occurred.

6.09 All reports required by paragraphs 6.06 and 6.07 of this Part F shall include a description of the claim, shall be accompanied by documentary proof upon such forms and in such manner as the Rehabilitator shall direct, and shall demonstrate the following:

- (a) the consideration for the claim;
- (b) any security held therefor;
- (c) any payments made thereon;
- (d) that Amreco justly owes the sum or obligation to such Creditor; and,
- (e) any other proof reasonably requested by the Rehabilitator.

6.10 Upon receiving any report required by paragraphs 6.06 and 6.07 of this Part F, the Rehabilitator shall either:

- (a) accept the same without further notice to the Creditor, in which case payment on such report shall be made pursuant to the provisions of part G of this Plan; or
- (b) give written notice to the Creditor within a reasonable time that:
 - (i) The Rehabilitator must delay his acceptance of the report pending receipt by the Rehabilitator of further documentation, explanation or proof to assist him in determining the merits of such report; or,
 - (ii) That Rehabilitator must reject the report, or any part thereof, and in writing state the reasons for his rejection. The Creditor may request in writing that the rejection be reconsidered by the Rehabilitator, stating the reasons why reconsideration is warranted, supported by appropriate documentation. The Creditor shall transmit such request so that the Rehabilitator receives it within 30 days after the Creditor receives the notice of rejection by the Rehabilitator. The Rehabilitator shall notify the Creditor of his decision on reconsideration within a reasonable time. If the Rehabilitator does not accept the report upon reconsideration, the Creditor within 30 days after receiving the Rehabilitator's decision on reconsideration either may:
 - (A) object to the Rehabilitator's rejection of the Creditor's report and present its objection in writing to the Supervising Court; or
 - (B) object to such rejection and avail itself of any contractual right to arbitration, any award from which shall be brought by the Creditor for confirmation to the Supervising Court within 30 days after such award is made final.

6.11 Any Cedant, Reinsurer or Creditor, before any report by it comes due under this Part F, may, for good cause shown, petition the Rehabilitator in writing for an extension of time to file such reports, not to exceed 90 days. No extension may be sought for reports required by paragraphs 6.01 and 6.06 of this Part F. If the Rehabilitator denies such petition, the petitioning Cedant, Reinsurer or Creditor within 30 days may object to the Rehabilitator's denial of such petition and present its objection in writing to the Supervising Court.

6.12 Absent an extension of time granted pursuant to Paragraph 6.11 of this Plan, any Cedant, Reinsurer or Creditor failing to deliver to the Rehabilitator any report contemplated by Parts E and F of this Plan by the dates herein required shall be deemed to have abandoned and waived any claim for payment arising out of such report, and the Rehabilitator shall not pay the same.

Part G. Payment Formulas and Payment Periods

7.01 Within 90 days after the Supervising Court enters this Plan, and on or before November 30, 1989 and November 30th of each year thereafter during the pendency of this Plan, the Rehabilitator shall petition the Supervising Court for approval of a formula for payment ("Payment Formula") of 100% of Amreco's "Current Obligations" and for approval of the period during which such formula shall be effective ("Payment Period"). For purposes of this Part G, "Current Obligations" shall mean those unreimbursed obligations owed by Amreco to a Cedant, Reinsurer or Creditor which the Cedant, Reinsurer or Creditor has actually paid, and which such Cedant, Reinsurer or Creditor has reported during the contemplated Payment Period. The following components, taken together, shall comprise the Payment Formula:

- (a) The relative percentages by which Amreco's Current Obligations for the relevant Payment Period shall be paid (i) in cash and (ii) by non-negotiable surplus draft ("Surplus Draft");
- (b) Any percentage by which the principal amount of all previously issued Surplus Drafts shall be redeemed by the payment of cash;
- (c) The rate of interest which shall accrue upon all Surplus Drafts during the contemplated Payment Period; and
- (d) The date upon which accrued interest shall be paid.

7.02 Upon the entry of an order from the Supervising Court approving the petition required by paragraph 7.01 of this Part E, the Rehabilitator shall notify each Cedant, Reinsurer and Creditor, from whom the Rehabilitator has received reports required under this Plan, of the Payment Formula and the Payment Period.

7.03 The payments contemplated by Paragraph 7.01 of this Part G shall be net of:

- (a) Any sums properly set-off pursuant to this Plan;
- (b) The amount of security which Cedants or Creditors have applied or intend to apply pursuant to this Plan;
- (c) Any sums received by Cedants, Reinsurers or Creditors from any payments contemplated by this Plan;
- (d) Any amounts of salvage or subrogation actually collected by Cedants or Reinsurers (or the reinsured of any such Cedant, if applicable) to all or part of which Amreco may be entitled; and
- (e) Any other sum properly deducted by Amreco from such payment.

7.04 Net payment of all obligations of Amreco shall be made by the Rehabilitator according to the following schedule:

<u>Obligations Approved by the Rehabilitator on or before</u>	<u>Shall be paid by the Rehabilitator during or before</u>
February 25 of each year	The week of May 15 of each year
May 25 of each year	The week of August 15 of each year
August 25 of each year	The week of November 15 of each year
November 25 of each year	The week of February 15 of each year.

7.05 Throughout the pendency of this Plan, the Rehabilitator shall process all reports received from Cedants pursuant to this Plan, including reports of paid loss and related loss adjustment expense, and shall report the same to Amreco's

Reinsurers pursuant to the applicable Reinsurance Agreements between Amreco and the Reinsurers. The Rehabilitator shall collect reinsurance payments from the Reinsurers made pursuant to or as a result of such reports, and shall deposit the same in the general assets of Amreco. Such reinsurance payments and any and all interest or other income the Rehabilitator receives upon his investment of such payments shall become and remain part of the general assets of Amreco, and no Cedant, Reinsurer or Creditor shall have a claim upon them, except as provided by this Plan.

7.06 If the Rehabilitator determines that a strong likelihood exists that a material adverse consequence may require Amreco to be placed into liquidation, he may suspend all payments contemplated by this Part G while he evaluates and attempts to remedy such consequence. If the Rehabilitator determines that any such suspension shall exceed 90 days, he shall notify all Cedants, Reinsurers and Creditors from whom he has received reports required under this Plan and who would be eligible for payment during the suspension period, and shall report such suspension to the Supervising Court.

7.07 Any payment made to a Cedant for a paid loss or related paid loss adjustment expense pursuant to this Part G shall be deemed payment in full, without diminution, of Amreco's obligation to such Cedant.

Part H. Non-Negotiable Surplus Draft

8.01 Attached as Exhibit A to this Plan is the form of non-negotiable surplus draft to be executed by the Rehabilitator and delivered to Cedants and Creditors as payment in full of the value stated on the face of such draft pursuant to Part G of this Plan.

- 8.02 Surplus Drafts may be issued after the terms and conditions of issuance of such Drafts have been approved in a hearing by the Supervising Court upon the fairness of such terms and conditions at which all Cedants and Creditors have a right to appear and be heard.
- 8.03 Delivery to a Cedant or Creditor of a Surplus Draft as payment of Amreco's obligations pursuant to this Plan shall be deemed payment in full, without diminution, of that amount of Amreco's reinsurance obligation to such Cedant or Creditor represented by such Surplus Draft.

Part I. Liability Exclusion

- 9.01 Neither Amreco, its officers, directors, members, employees, agents, consultants and attorneys, nor the Rehabilitator, his staff, employees, agents, consultants, attorneys and senior attorneys, shall have any liability to any Cedant, Creditor or Reinsurer, or to any of their respective creditors, assigns, representatives, or receivers, for any act or omission in connection with the formulation, preparation, adoption, description, explanation, or implementation of this Plan, including without limitation:
- (a) inaccuracy of any report delivered to Amreco by such Cedant pursuant to Part F of this Plan or any reinsurance contract entered into between such Cedant and Amreco;
 - (b) inaccuracy of any report delivered to any Reinsurer pursuant to Part F of this Plan or pursuant to any reinsurance contract entered into between Amreco and such Reinsurer;
 - (c) tardy delivery of any report from a Cedant to Amreco or from Amreco to a Reinsurer pursuant to this Plan;
 - (d) failure to pursue or collect any sums due Amreco from any Cedant or Reinsurer;
 - (e) failure to audit, investigate, supervise or defend any claim or obligation ceded to Amreco under a Reinsurance Agreement where such Reinsurance Agreement may otherwise provide; or

(f) solvency or insolvency of any Cedant or Reinsurer.

Part J. Termination of this Plan

- 10.01 If at any time the Director of Insurance of the State of Illinois finds that the causes and conditions which necessitated the rehabilitation proceedings of Amreco have been removed, he may petition the Supervising Court, without notice to Cedants, Reinsurers or Creditors, for an order terminating his conduct of Amreco's business and permitting Amreco to resume possession of its property and the conduct of its business, and for a full discharge of all liability and responsibility of the Director as Rehabilitator and his attorneys, senior attorneys, accountants, assistants, consultants, Special Deputy and staff.
- 10.02 If the Director determines that Amreco's articles of incorporation or by-laws should be amended or changed as a condition precedent to his discharge as Rehabilitator, he shall give notice to Amreco's members of such proposed amendment or change in such form as the Supervising Court may direct.
- 10.03 If the Director determines that the causes and conditions which necessitated the rehabilitation proceedings of Amreco have been removed and that it is in the best interests of Amreco's members that Amreco be dissolved, he shall petition the Supervising Court for an Order dissolving Amreco, upon such notice to Amreco's members as the Supervising Court shall direct, and he shall make recommendations for the disbursement of Amreco's remaining assets and liabilities, including any guarantee fund surplus promissory notes issued pursuant to Section 34.1 of the Illinois Insurance Code (Ill. Rev. Stat. ch. 73, ¶ 646.1).

- 10.04 If the Rehabilitator determines that Amreco is no longer rehabilitatable, or that it is in the best interests of Amreco's members, Cedants, Reinsurers, Creditors and the public to liquidate Amreco, he shall proceed in accordance with the applicable provisions of the Illinois Insurance Code concerning the liquidation of domestic companies. If the Director files a complaint seeking the liquidation of Amreco, all payments to be made pursuant to Part G of this Plan shall terminate immediately, pending further order of the Supervising Court. If a final order of liquidation is entered against Amreco at any time, this Plan shall terminate immediately and such final order, the provisions of the Illinois Insurance Code and any other applicable foreign statutes shall prevail and be paramount to this Plan. In the event Amreco is liquidated, all Surplus Drafts issued pursuant to Part G of this Plan shall be deemed liquidated claims.
- 10.05 Throughout the pendency of this Plan, the Rehabilitator shall review Amreco's condition and shall report the same to the Supervising Court not less than annually, along with a report of his activities under the Plan.

Part K. Commutations and Petitions From Stays

- 11.01 During the pendency of this Plan, the Rehabilitator may attempt the voluntary commutation of any or all Reinsurance Agreements wherein Amreco ceded a portion of its liability to any Reinsurer or wherein Amreco assumed any liability or obligation from a Cedant, including without limitation those Reinsurers who delivered security to Amreco to secure their performance of such reinsurance contracts, and including without limitation those Cedants to whom Amreco delivered security to secure Amreco's performance of its assumed obligations subject to the approval of the Supervising Court.

11.02 Cedants, Reinsurers and Creditors whose direct actions or arbitration proceedings against Amreco have been or may be stayed or dismissed as a result of the Order of Rehabilitation shall have the right to assert their claims against the Rehabilitator in the form of a written petition which shall be delivered to the Rehabilitator in such manner as the Rehabilitator shall direct, and shall include documentary proof in such form and of such nature as the Rehabilitator may direct, demonstrating:

- (a) the nature of the claim, right, obligation or duty asserted;
- (b) the consideration therefor;
- (c) any security held therefor;
- (d) any payments made thereon;
- (e) that Amreco justly owes the sum or obligation; and
- (f) such other proof reasonably requested by the Rehabilitator.

11.03 Upon receiving a petition required by paragraph 11.02 of this Part K, the Rehabilitator shall either:

- (a) accept the same without further notice to the Cedant, Reinsurer or Creditor, in which case payment on such petition shall be made pursuant to the provisions of part G of this Plan; or
- (b) give written notice to the Cedant, Reinsurer or Creditor within a reasonable time that:
 - (i) The Rehabilitator must delay his acceptance of the petition pending receipt by the Rehabilitator of further documentation, explanation or proof to assist him in determining the merits of such petition; or.
 - (ii) That Rehabilitator must reject the petition, or any part thereof, and in writing state the reasons for his rejection. The Cedant, Reinsurer or Creditor may request in writing that the rejection be reconsidered by the Rehabilitator, stating the reasons why reconsideration is warranted, supported by appropriate documentation. The Cedant, Reinsurer or Creditor shall transmit such petition so that the Rehabilitator receives it within 30 days after the Cedant, Reinsurer or

Creditor receives the notice of rejection by the Rehabilitator. The Rehabilitator shall notify the Cedant, Reinsurer or Creditor of his decision on reconsideration within a reasonable time. If the Rehabilitator does not accept the petition upon reconsideration, the Cedant, Reinsurer or Creditor, within 30 days after receiving the Rehabilitator's decision on reconsideration, may either:

- (A) object to the Rehabilitator's rejection of the Cedant, Reinsurer or Creditor's petition and present its objection in writing to the Supervising Court; or
- (B) object to such rejection and avail itself of any contractual right to arbitration, any award from which shall be brought by the Cedant, Reinsurer or Creditor for confirmation to the Supervising Court within 30 days after such award is made final.

Part L. Ancillary States

12.01 This Plan of Rehabilitation does not replace or supercede any provision of Article XIII 1/2 of the Illinois Insurance Code (Ill. Rev. Stat. ch. 73, ¶¶ 833.1, et seq.) or of any similar law enacted by any sister state of the State of Illinois which is a "reciprocal state" as defined in Section 221.1(1) of the Illinois Insurance Code (Ill. Rev. Stat. ch. 73, ¶ 833.1(10)), except as specifically set forth in this Plan.

Part M. Reservation of Rights

13.01 Nothing in the provisions of this Plan shall be construed or interpreted as a limitation or qualification of any other rights or remedies which the Director, whether acting as Rehabilitator or otherwise, may have or exercise under the Illinois Insurance Code and any amendments thereto.

13.02 Subject to the approval of the Supervising Court, and with or without notice as the Supervising Court shall direct, the Rehabilitator may amend this Plan at any time.

Part N. Continuing Jurisdiction of Supervising Court

14.01 Throughout its pendency, the Supervising Court shall have continuing jurisdiction over this Plan and the rehabilitation of Amreco.

Part O. Finality Upon Entry of This Plan

15.01 Entry of this Plan by the Supervising Court shall be deemed to be a final order and to include the following express written finding pursuant to Illinois Supreme Court Rule 304(a) (Ill. Rev. Stat. ch. 110A, ¶ 304(a)): There is no just cause to delay enforcement of or appeal from this Plan or any of the provisions contained herein.

Respectfully submitted,

JOHN E. WASHBURN
Director of Insurance of the
State of Illinois as Rehabilitator of
American Mutual Reinsurance Company

By: _____
Frank J. Csa, _____
His Special Deputy ENTERED: _____
ENTERED: _____ SEP 6 2003
H. SIEGAN 740

Judge Presiding

Seymour F. Simon
Theodore A. Shapero
Stephen W. Schwab
Carolyn S. Reed
RUDNICK & WOLFE
203 North LaSalle Street, Suite 1800
Chicago, Illinois 60601
(312) 368-4000
Attorney No. 90712

OF COUNSEL:

Garry L. Smith
Debra J. Anderson
Counsel To The Receiver
446 East Ontario Street, Suite 700
Chicago, Illinois 60611
(312) 915-4700
Attorney No. 16819

Part B.
PAYMENT

2.01 **Indebtedness:** FOR VALUE RECEIVED, the Maker hereby promises to pay to Payee, at Payee's address stated above or such other place as Payee may from time to time designate in writing to Maker, the sum set forth above or such lesser amounts as may be outstanding from time to time (the "Principal Sum"), plus any and all accrued and unpaid interest thereon at the rate hereinafter provided, in lawful money of the United States of America, at the time or times and in the manner hereinafter provided.

2.02 **Interest:** Interest on the unpaid balance of the Principal Sum outstanding hereunder shall accrue from and after the date hereof until paid, computed at a rate per annum declared from time to time as hereinafter provided. Interest shall be computed for the actual number of days elapsed on the basis of a year consisting of 360 days and a month consisting of 30 days. Interest shall not compound.

2.03 **Maturity Date:** All accrued and unpaid interest and the entire unpaid balance of the Principal Sum shall be due and payable on December 31, 2041 (the "Maturity Date").

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:

- (i) 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
- (ii) 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.

2.05 **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.

2.06 **Payments:** The obligation of payment hereunder shall be deemed satisfied by the mailing by Maker of a check, United States Mail First Class postage prepaid, to the Payee at the address of Payee as specified in the records of Maker. Maker shall have no liability whatsoever to the holder of any Surplus Draft unless the Maker in its sole discretion is satisfied as to the title of such Payee.

2.07 **Rate of Interest:** The rate of interest accrued hereunder shall be such rate per annum declared by the Maker and approved by the Court pursuant to the Plan; provided, however, in no event shall the rate of interest hereunder at any time and from time to time be a rate per annum of less than 0.5% (one half of one percent) nor a rate greater than 7% (seven percent).

2.08 **Declaration of Rate of Interest:** On or before November 30th of each year the Maker shall, in its sole discretion, set a rate of interest to be accrued hereunder by Maker for the succeeding year and upon approval of the Court of a rate of interest for such succeeding year, such approved rate of interest shall be the rate of interest accrued hereunder for such succeeding year. In the event the Court does not approve a rate of interest for any year, the interest accrued hereunder for such year shall be 0.5% (one half of one percent).

Part C. OTHER MATTERS

3.01 **Notices:** Any notice that Payee or Maker may desire or be required to give to the other shall be in writing and shall be mailed or delivered to the intended recipient thereof at its address hereinabove set forth or at such other address as such intended recipient may, from time to time, by notice in writing, designate to the sender pursuant hereto. Any such notice shall be deemed to have been delivered two (2) business days after mailing by United States registered or certified mail, return receipt requested, or when delivered in person.

3.02 **Governing Law:** The place of negotiation, execution, and delivery of this Surplus Draft, and the place of performance being in the State of Illinois, this Surplus Draft shall be governed by and construed in accordance with the laws of that State.

3.03 **Waivers, Consents, Etc.:** Maker, for itself and its successors, hereby waives presentment, protest and demand, demand, notice of protest, dishonor, non-payment, and all other notices, and any defense by reason of an extension of time for payment or other indulgences.

3.04 **Interpretation:** The headings of sections and paragraphs in this Surplus Draft are for convenience only and shall not be construed in any way to limit or define the content, scope, or intent of the provisions hereof. As used in this Surplus Draft, the singular shall include the plural, and masculine, feminine, and neuter pronouns shall be fully interchangeable, where the context so requires. If any provision of this Surplus Draft, or any paragraph, sentence, clause, phrase, or word, or the application thereof, in any circumstances, is adjudicated to be invalid, the validity of the remainder of this Surplus Draft shall be construed as if such invalid part were never included herein. Time is of the essence of this Surplus Draft.

3.05 **Nonassignability:** This Surplus Draft is non-negotiable, non-transferable, and non-assignable.

3.06 **Liability of Certain Persons:** All agreements of Maker made herein are made by Maker as an Illinois domestic mutual property casualty and fire company and not by the Rehabilitator, his staff, employees, agents, consultants, attorneys, or senior attorneys, nor any officer, director, member, employee, agent, consultant or attorney of Maker. Notwithstanding the provision of any statute or any principle of law, Payee

agrees that neither shall have any personal liability for any obligation created by this Surplus Draft, whether express or implied, and Payee agrees that Payee shall look solely to the assets of Maker to satisfy any and all claims hereunder. Payee shall not seek to enforce any liability or recourse against the Rehabilitator, his staff, employees, agents, consultants or attorneys, nor any officer, director, member, employee, agent, consultant or attorney of Maker.

IN WITNESS WHEREOF. Maker has caused this Surplus Draft to be executed as of the date first written hereinabove.

**AMERICAN MUTUAL REINSURANCE
COMPANY**, an Illinois domestic mutual
property, casualty and fire company

By: _____
As Rehabilitator