

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

In re the Rehabilitation of)
) No. 88 CH 1595
AMERICAN MUTUAL)
REINSURANCE COMPANY)

SECOND AMENDED PLAN OF REHABILITATION
FOR AMERICAN MUTUAL REINSURANCE COMPANY

NATHANIEL S. SHAPO, Director of Insurance of the State of Illinois, acting solely in his statutory and court-affirmed capacity as Rehabilitator of **AMERICAN MUTUAL REINSURANCE COMPANY** ("Amreco"), pursuant to § 192(4) of the Illinois Insurance Code (215 ILCS 5/192(4)) and ¶ 13.02 of the Amended Plan of Rehabilitation for Amreco entered by this Court on September 6, 1988, proposes the following Second Amended Plan of Rehabilitation for Amreco:

Part A. Definitions

1.01 The following definitions apply in this Second Amended Plan:

- (a) **Absolute Claim**: Any Claim which is not a Contingent Claim.
- (b) **Allowed Claim**: All or that part of a Claim which the Supervisory Court allows.
- (c) **Article XIII**: Article XIII of the Code, 215 ILCS 5/187-221.13.
- (d) **Cedents**: Insurance companies and entities that have ceded risks, liabilities or obligations to Amreco through or pursuant to Reinsurance Agreements.
- (e) **Claim**: An assertion of a right to share in a distribution of General Assets.
- (f) **Claimant**: Any person or entity who makes a Claim.

- (g) **Claims Valuation Date:** The date as of which the Rehabilitator shall value Claims, **June 30, 2001.**
- (h) **Code:** The Illinois Insurance Code, 215 ILCS 5/1 *et seq.*
- (i) **Contingent Claim:** All of that part of any Claim made under a Reinsurance Agreement entered into by or with Amreco, based upon a loss or event which occurred on or prior to February 22, 1988, and during the period covered by the Reinsurance Agreement, but as to which liability of the Cedent has not been established as of the Final Claims Filing Date. The term "Contingent Claim" shall include, but not be limited to, I.B.N.R.
- (j) **Director:** The Director of Insurance of the State of Illinois.
- (k) **Filed:** The Rehabilitator's actual receipt of any claim, notice, objection or other document.
- (l) **Final Claims Filing Date:** **Sixty (60) days after** the order entering this Second Amended Plan becomes final and non-appealable.
- (m) **First Amended Plan:** The Amended Plan of Rehabilitation entered by the Supervisory Court on September 6, 1988.
- (n) **General Assets:** All of Amreco's property, real or personal, regardless whether mortgaged, pledged, deposited as security or otherwise encumbered.
- (o) **General 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, excluding equity holders and persons or entities appointed by the Rehabilitator pursuant to Part C.
- (p) **I.B.N.R.:** Incurred but not reported losses.
- (q) **Net Present Value:** The total present value of expected future cash inflows, less the total present value of all expected future cash outflows, discounted at an appropriate rate of return to be set by the Supervisory Court.
- (r) **Notice of Determination:** A written notice of the Rehabilitator's determination to allow or deny a Claim in whole or in part.
- (s) **Order of Rehabilitation:** The order of rehabilitation entered by the Supervisory Court on February 22, 1988.

- (t) **Proof of Claim:** A written statement meeting the requirements of 215 ILCS 5/209.
- (u) **Qualified Actuary:** A casualty actuary who is: (a) a member in good standing of either the American Academy of Actuaries or the Casualty Actuarial Society; and (b) qualified to execute and deliver casualty loss reserve opinions.
- (v) **Rehabilitator:** The Director, acting solely in his statutory and court-affirmed capacity as Rehabilitator of Amreco.
- (w) **Reinsurance Agreement:** Any written agreement, contract, treaty, certificate or other document establishing or purporting to establish reinsurance rights or obligations, including, but not limited to, slips, binders, cover notes and indemnity and liability agreements.
- (x) **Reinsurers:** Insurance companies and entities who have assumed risks, liabilities or obligations from Amreco through Reinsurance Agreements.
- (y) **Second Amended Plan:** This Second Amended Plan of Rehabilitation (this "Plan"), including the exhibit attached hereto.
- (z) **Supervisory Court:** The court before which the Amreco rehabilitation proceeding is pending, or the presiding judge in such proceeding.
- (aa) **Surplus Draft:** A non-negotiable surplus draft in the form attached to this Second Amended Plan as Exhibit A.

Part B. Powers of the Rehabilitator

2.01 The Rehabilitator shall have the power to exercise, pursue or avail himself of any lawful right, power or remedy as is necessary or proper to implement this Plan, including, but not limited to, the power:

- (a) to reserve or utilize General Assets to:
 - (i) pay the costs and expenses of Amreco's administration;
 - (ii) meet Amreco's obligations under this Plan; and
 - (iii) make investments as the Rehabilitator deems appropriate and prudent;

- (b) to acquire, sell, transfer, abandon or otherwise dispose of or deal with General Assets upon such terms and conditions as are reasonable;
- (c) to execute, acknowledge and deliver any documents or instruments necessary or proper to effectuate any transaction;
- (d) to enter into such contracts as the Rehabilitator deems necessary or proper to implement this Plan, and to affirm, modify or disavow any contracts to which Amreco is or may be a party; and
- (e) to institute and pursue, either in Amreco's name or in the Rehabilitator's own name, any and all suits and other legal proceedings and remedies before the Supervisory Court or in any other jurisdiction, and to assert all available claims and defenses.

Part C. Administration

- 3.01 The Rehabilitator shall pay out of General Assets all costs and expenses of Amreco's administration. The Rehabilitator shall report all such payments to the Supervisory Court in (i) quarterly reports of receipts and disbursements, pursuant to 215 ILCS 5/202 (D)(1) ("Quarterly Reports"), and (ii) an annual report ("Annual Report").
- 3.02 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 Second Amended 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 General Assets, and shall report such payments to the Supervisory Court in the Quarterly Reports. The compensation of those attorneys the Rehabilitator employs to counsel and represent him as his "senior" attorneys shall be paid out of General Assets only upon the entry of a Supervisory Court order approving the rate of compensation pursuant to 215 ILCS 5/202(a). Any compensation the Rehabilitator pays accountants retained to perform

Amreco's annual audit, pursuant to 215 ILCS 5/200, shall be reported to the Supervisory Court in the Quarterly Reports.

- 3.03 The Rehabilitator may sell any General Asset to pay:
- (a) the costs and expenses of Amreco's administration;
 - (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 Second Amended Plan.

Approval of this Seconded Amended Plan shall constitute the approval and direction of the Supervisory Court pursuant to 215 ILCS 5/192(2). The Rehabilitator shall report the sale of any General Asset to the Supervisory Court in the Quarterly Reports.

- 3.04 Upon the entry of this Second Amended Plan by the Supervisory Court, and throughout its pendency, Amreco shall not issue or renew any policies of insurance, assume or renew any additional reinsurance risks, liabilities or obligations nor issue or accept any additional subordinated guaranty fund surplus promissory notes within the meaning of 215 ILCS 5/34.1.

Part D. Reporting By Cedents and Creditors

- 4.01 New or updated **Proofs of Claim** specifically identifying each Absolute Claim and each Contingent Claim, made in accordance with 215 ILCS 5/209(4), which have not been Filed as of the date of entry of this Second Amended Plan, **must be Filed on or before the Final Claims Filing Date**. Proofs of Claim shall be filed in hard copy and sent via (a) First Class United States mail, registered or certified mail, return receipt requested, postage prepaid; (b) telecopier, if confirmation copy is sent by overnight mail; and (c) national overnight courier. Notwithstanding the foregoing, a Proof of Claim may be filed

electronically, if agreed to by the Rehabilitator, and if a confirmation copy is sent via First Class United States mail, registered or certified mail, return receipt requested, postage prepaid or national overnight courier.

4.02 Any Proof of Claim Filed after the Final Claims Filing Date shall be deemed abandoned and waived, the Rehabilitator shall not allow or recommend for Supervisory Court approval any such Claim, and the Rehabilitator shall have no other obligation to review or process such Claim.

4.03 In addition to the requirements of 215 ILCS 5/209, each Proof of Claim shall include all of the following information:

- (a) The amount and a description of the Claim, including a copy of, or reference to, the Reinsurance Agreement under which the Claim is made;
- (b) All losses and related loss adjustment expenses including for defense and cost containment and adjusting and other expenses which were actually paid or satisfied by the Cedent (or the reinsured of such Cedent, if applicable), for any portion of which such Cedent asserts Amreco is obligated to reimburse it, but which Amreco has not paid, in whole or in part, as of **June 30, 2001**;
- (c) The amount and a description of any set-off or counterclaim the Cedent has applied, is applying or intends to apply against Amreco's share of those paid losses and related loss adjustment expenses contemplated by sub-¶ (b) of this ¶ 4.03, as of **June 30, 2001**;
- (d) The amount of security held by, in favor or for the benefit of the Cedent which such Cedent has applied, is applying or intends to apply against those unreimbursed paid losses and related loss adjustment expenses contemplated in sub-¶ (b) of this ¶ 4.03, and any balance remaining after resort to such security, as of **June 30, 2001**;
- (e) The amount and a description of the source of any salvage or subrogation collected by the Cedent or to which the Cedent is or may be entitled, to all or a part of which Amreco is or may be entitled, as of **June 30, 2001**;
- (f) The amount and a description of all unpaid reported loss, I.B.N.R. and all related loss adjustment expense reserves, including for defense and cost containment and

adjusting and other expenses, established upon the books and records of the Cedent on or before **June 30, 2001**, which such Cedent reasonably believes will result in a Claim against Amreco, and a description of each such Claim; and

- (g) The amount and a description of all unpaid reported loss, I.B.N.R. and all related loss adjustment expense reserves contemplated in sub-¶ (b) of this ¶ 4.03, previously reported to Amreco or the Rehabilitator which the Cedent has adjusted by increase or decrease upon its books or records on or before **June 30, 2001**.
- (h) All I.B.N.R. reported pursuant to sub-¶¶ (f) and (g) of this ¶ 4.03 shall include reasonable support of the amounts reported, including a detailed explanation of how the amounts were calculated, as of **June 30, 2001**. The Proof of Claim shall include work papers, or other materials and information, demonstrating that any assertion of I.B.N.R. is calculated either with reasonable actuarial certainty or upon another accepted method of valuing claims with reasonable certainty. Further, the Proof of Claim shall include documentation and, if applicable, the signature of a Qualified Actuary attesting to the accuracy of the amount asserted, sufficient for the Rehabilitator's staff or actuary to recalculate the I.B.N.R. as of **June 30, 2001**. If a Cedent included in Schedule F of its 2000 Statutory Annual Statement a specific I.B.N.R. amount for Amreco, the Cedent must provide a copy of that page from the annual statement along with the Proof of Claim.

4.04 With each Proof of Claim Filed pursuant to ¶¶ 4.01 and 4.03 of this Part D, Cedents shall provide a certification by their Chief Financial Officer (or any other authorized senior officer or management representative), in such form as the Rehabilitator shall require, that the Cedent has and will maintain in its own books and records evidence of the claimed losses and any related loss adjustment expenses including for defense and cost containment and adjusting and other expenses or reserves therefor reported to the Rehabilitator. Such certification shall not operate to replace, abrogate or reduce the Rehabilitator's right to audit such books and records in accordance with the applicable Reinsurance Agreement between the certifying Cedent and Amreco.

4.05 Except as hereinafter provided, the Rehabilitator shall review and process each Proof of Claim.

4.06 A Contingent Claim shall be deemed to be Absolute if liability for, and the Net Present Value of, the Claim are established by the Rehabilitator by estimation, based upon an actuarial evaluation made with reasonable actuarial certainty or upon another accepted method of valuing claims with reasonable certainty. The Rehabilitator shall recommend that the Supervisory Court approve all or any part of a Contingent Claim that is deemed Absolute as of the Claims Valuation Date, **June 30, 2001**.

4.07 Upon receiving any Proof of Claim required by §§ 4.01 and 4.03 of this Part D, the Rehabilitator shall either:

(a) allow the Claim, send a Notice of Determination to Claimant and recommend the Claim for approval by the Supervisory Court pursuant to 215 ILCS 5/209(13); or

(b) notify the Claimant within a reasonable time that:

(i) The Rehabilitator must delay his review of the Proof of Claim pending:

(A) receipt by the Rehabilitator of further documentation, explanation or proof to assist in evaluating such Proof of Claim; or

(B) the conclusion of an audit of the Claimant; or,

(ii) The Rehabilitator denies the Proof of Claim, or any part thereof, and in writing state the reasons for his denial. The Claimant may object and request in writing that the denial be reconsidered by the Rehabilitator, stating the reasons why such reconsideration is warranted, supported by documentation. The Claimant shall transmit such request so that the Rehabilitator receives it **within sixty (60) days** after the Rehabilitator sent the Notice of Determination. The Rehabilitator shall notify the Claimant in writing of his decision on reconsideration within a reasonable time. If the Rehabilitator denies the Proof of Claim upon reconsideration, the Claimant, **within sixty (60) days** after receiving the Rehabilitator's decision on reconsideration may object to the Rehabilitator's denial of the Proof of Claim, in which case the Rehabilitator shall either:

(A) commence binding arbitration proceedings pursuant to the terms of the arbitration provision contained in the

Reinsurance Agreement between the Rehabilitator and the Claimant; or

- (B) petition the Court for a hearing pursuant to 215 ILCS 5/209(11)(b).
- (c) No judgment against, no settlement by, and no payment of loss or loss adjustment expense, including defense and cost containment and adjusting and other expenses, by, a Claimant or the cedent creditor of such Claimant after June 30, 2001, shall be considered by the Rehabilitator as evidence of liability or of the amount of damages to which such Claimant is or may be entitled.
- (d) Notwithstanding anything contained in this Second Amended Plan to the contrary, the following matters shall remain within the exclusive province of the Supervisory Court and shall not be arbitrable: (a) the methodology for determination of Allowed Claims; (b) set-off; (c) the amount and priority of Allowed Claims; and (d) other issues arising out of or relating to the construction, interpretation or application of Article XIII or this Second Amended Plan.

Part E. Settlements and Commutations

- 5.01 The Rehabilitator may compromise and settle, in writing, all doubtful, disputed or uncollectible debts or Claims owing to or by Amreco having a separate value of less than \$250,000.00, and shall report the same to the Supervisory Court in the Quarterly and Annual Reports. 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 Claimants and members, shall be submitted to the Supervisory Court for its approval. Payment of any such compromised or settled debt or Claim shall be made pursuant to Part F of this Second Amended Plan. Approval of this Second Amended Plan shall constitute the approval and direction of the Supervisory Court pursuant to 215 ILCS 5/192(2).
- 5.02 During the pendency of this Second Amended Plan, the Rehabilitator may, in his or her discretion, 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 risk, liability or obligation from a Cedent, including, without limitation, those Reinsurers who delivered security to Amreco to secure their performance of such Reinsurance Agreements, as well as those Cedents to whom Amreco delivered security to secure Amreco's performance of its assumed risks, liabilities or obligations. Any commutation having a separate value of \$250,000.00 or more which the Rehabilitator deems commercially reasonable and should be executed in the best interests of Amreco and its Claimants, shall be submitted to the Supervisory Court for its approval. Any payment due from Amreco to a Cedent or Reinsurer pursuant to any such compromised or settled debt or Claim shall be made pursuant to Part F of this Second Amended Plan. Approval of this Seconded Amended Plan shall constitute the approval and direction of the Supervisory Court pursuant to 215 ILCS 5/192(2).

- 5.03 The financial and other material terms and conditions of any settlement or commutation made or entered pursuant to this Part E may be presented to and reviewed by the Court *in camera* upon a showing that the settlement or commutation involves confidential information (*e.g.*, the wording of the commutation endorsement, as well as the financial formula, discount factor or other calculations employed by the Rehabilitator in negotiations), disclosure of which would hinder the Rehabilitator's future settlement or commutation negotiations or ability to marshal General Assets.

Part F. Payment of Allowed Claims

- 6.01 The Rehabilitator shall make distribution from General Assets on Allowed Claims pursuant to a formula for payment ("Payment Formula"), consisting of the relative

percentages by which the Allowed Claims shall be paid (i) in cash, and (ii) by Surplus Draft. Interest shall accrue only upon issued Surplus Drafts at such rates and for such periods of time as the Supervisory Court shall determine, and shall be paid annually in such amounts and at such time as the Court shall set.

6.02 Payments of cash contemplated by ¶ 6.01 of this Part F shall be by check in lawful currency of the United States. Each check shall be made payable to the Claimant and/or any person or entity whom the Rehabilitator has been notified to be entitled to receive or share in such payment, and shall be delivered by first class mail, postage prepaid, addressed to the Claimant or such person or entity at its last known address, or by such other method of delivery as the Claimant requests and the Rehabilitator, exercising reasonable discretion, deems appropriate.

6.03 The payments contemplated by ¶ 6.01 of this Part F shall be net of:

- (a) Any sums properly set-off pursuant to 215 ILCS 5/206 and this Second Amended Plan;
- (b) The amount of security which Claimants have applied or intend to apply pursuant to this Second Amended Plan;
- (c) Any sums received by Claimants from payments made under this Second Amended Plan;
- (d) Any amounts of salvage or subrogation actually collected by Claimants (or the reinsured of any such Claimant, if applicable) to all or part of which Amreco is or may be entitled; and
- (e) Any other sum properly deducted by the Rehabilitator from such payment.

6.04 Net payment of all Allowed Claims shall be made by the Rehabilitator according to the following schedule:

**Allowed Claims Approved
by the Rehabilitator
on or before**

**Shall be paid by the
Rehabilitator during or before**

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.

- 6.05 Any payment made to a Claimant on an Allowed Claim pursuant to this Part F shall be deemed payment in full, without diminution, of Amreco's obligation to such Claimant, and shall constitute a full and final settlement of Amreco's obligations on the underlying Claim, and a full and complete release and discharge of Amreco, the Director, the Rehabilitator, the Special Deputy, and all clerks, attorneys, accountants and consultants employed by any of them, of any and all claims, of any kind or description whatsoever, whether arising in law or in equity, known and unknown, arising out of or relating to the underlying Claim, these proceedings and this Second Amended Plan.
- 6.06 Payments remaining unclaimed in the control of the Rehabilitator shall escheat to the State of Illinois pursuant to the provisions of 215 ILCS. 5/210(4).
- 6.07 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 F while he evaluates and attempts to remedy such consequence. If the Rehabilitator determines that any such suspension shall exceed ninety (90) days, he shall notify all Claimants from whom he has received Proofs of

Claims required under this Second Amended Plan and who would be eligible for payment during the suspension period, and shall report such suspension to the Supervisory Court.

Part G. Non-Negotiable Surplus Draft

- 7.01 Attached as Exhibit A to this Second Amended Plan is the Surplus Draft to be executed by the Rehabilitator and delivered to Claimants as payment in full of the value stated on the face of such Draft pursuant to Part F of this Second Amended Plan.
- 7.02 Delivery to a Claimant of a Surplus Draft as payment of Amreco's obligations pursuant to this Second Amended Plan shall be deemed payment in full, without diminution, of that amount of Amreco's payment obligation to such Claimant represented by such Surplus Draft.
- 7.03 The Rehabilitator shall not redeem such Surplus Drafts unless and until all Allowed Claims have been paid pursuant to the Payment Formula. Any such redemption shall be on a *pro rata* basis.

Part H. No Preferences

- 8.01 No act or omission of, by or made on behalf of the Rehabilitator in connection with Amreco's rehabilitation shall be construed or considered to be a preference within the meaning of 215 ILCS 5/204 or a fraudulent transfer under the Uniform Fraudulent Transfer Act, notwithstanding the fact that any such act or omission may cause a Claimant to receive a greater percentage of debt owed by Amreco than any other Claimant in the same priority established under 215 ILCS 5/205. Nothing in this Second Amended Plan shall be deemed to cause any Claimant to have any greater Claim than

that which they would have had if the Order of Rehabilitation or this Second Amended Plan had not been entered.

Part I. Rights of Set-off and Counterclaim

9.01 Subject to the provisions of any Reinsurance Agreement or other written agreement between Amreco and its Claimants or Reinsurers, and subject to the provisions of 215 ILCS 5/206, any Claimant and/or Reinsurer may assert any set-off or counterclaim against Amreco, provided the obligation sought to be set off or counterclaimed has been actually paid or deemed to be absolute, (with the sole exception of any premium owed by Amreco to any Cedent or Reinsurer), and that the Rehabilitator has been given proper written notice of such set-off or counterclaim pursuant to Part D of this Second Amended Plan.

9.02 Subject to the provisions of any Reinsurance Agreement or other written agreement between Amreco and its Claimants and/or Reinsurers and subject to the provisions of 215 ILCS 5/206, Amreco may assert any set-off or counterclaim against any Claimant.

Part J. Secured Parties and Special Deposit Claims

10.01 Secured Claimants may surrender their security and participate *pro rata* with unsecured Claimants in any payments from General Assets made by the Rehabilitator subsequent to such surrender. Any secured Claimant 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 Claimants pursuant to the provisions of this Second Amended Plan, provided that such secured Claimant has given proper written

notice of such balance to the Rehabilitator pursuant to Part D of this Second Amended Plan.

10.02 Where, pursuant to another jurisdiction's requirements, Amreco has posted a special or statutory deposit, Claimants who receive any payment from such special or statutory 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 F of this Second Amended Plan only after all other Claimants of the same priority not receiving any such special or statutory deposit payment have been paid percentages of their total obligation owed by Amreco equal to the percentage paid Claimants from such special or statutory deposit, provided that:

- (a) Throughout the pendency of this Second Amended Plan, the Rehabilitator must receive from all Claimants who have applied for or received a special or statutory 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 Claimant remaining after such application or payment; and
- (b) Any report made pursuant to sub-¶ (a) of this ¶ 10.02 must be received by the Rehabilitator **within ninety (90) days** after the events described in sub-¶ (a)(i), (ii) and (iii) have occurred.

Part K. Reinsurance Collections

11.01 Except as otherwise contained in this Second Amended Plan or as inconsistent with the applicable provisions of Article XIII, Cedents and Reinsurers shall retain the rights and obligations contained in their respective Reinsurance Agreements.

11.02 Throughout the pendency of this Second Amended Plan, the Rehabilitator shall process all Proofs of Claim received from Cedents pursuant to this Second Amended Plan, including reports of paid loss and related loss adjustment expense including for defense and cost containment and adjusting and other expenses, and shall report the same to Amreco's Reinsurers pursuant to the terms and conditions of 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 Cedent, Reinsurer or General Creditor shall have a claim upon them, except as provided by this Second Amended Plan.

Part L. Liability Exclusion and Indemnification

12.01 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 Claimant 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 Second Amended Plan, including without limitation:

- (a) inaccuracy of any information delivered to the Rehabilitator by a Claimant pursuant to Part D of this Second Amended Plan or any Reinsurance Agreement entered into between such Cedent and Amreco;
- (b) tardy delivery of any report from a Claimant to Amreco or from Amreco to a Reinsurer pursuant to this Second Amended Plan;

- (c) failure to pursue or collect any sums due Amreco from any Claimant or Reinsurer;
- (d) 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
- (e) solvency or insolvency of any Claimant or Reinsurer.

Part M. Termination of this Plan and Closure of the Estate

- 13.01 Throughout the pendency of this Second Amended Plan, the Rehabilitator shall review Amreco's condition and shall report the same to the Supervisory Court in the Annual Report.
- 13.02 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 Supervisory Court may order.
- 13.03 If the Rehabilitator determines that Amreco is no longer rehabilitatable, or that it is in the best interests of Amreco's members, Claimants and the public to liquidate Amreco, he shall proceed in accordance with the applicable provisions of the 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 F of this Second Amended Plan shall terminate immediately, pending further order of the Supervisory Court. If a final order of liquidation is entered against Amreco at any time, this Second Amended Plan shall terminate immediately and such final order and the provisions of the Code shall prevail and be paramount to this Second Amended Plan. In the event Amreco

is liquidated, all Surplus Drafts issued pursuant to Parts F and G of this Second Amended Plan shall be deemed Absolute Claims for the principal amount, and interest shall no longer accrue on such amounts.

- 13.04 After the Rehabilitator has distributed all General Assets remaining under the Rehabilitator's control in accordance with Parts F and G above, the Rehabilitator shall submit a final report to and shall petition the Supervisory Court for Amreco's dissolution pursuant to 215 ILCS 5/192(5), 196, 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.

Part N. Petitions From Stays

- 14.01 Cedents, Reinsurers and General 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 entered against Amreco may, consistent with the deadlines set forth in this Second Amended Plan, assert their claims against Amreco either in the form of a petition which shall be delivered to the Rehabilitator in such manner and with such supporting documentation as the Rehabilitator shall direct, or as part of a Proof of Claim which shall comply with and be filed pursuant to the requirements and provisions of Part D of this Second Amended Plan.

Part O. Ancillary States

- 15.01 This Second Amended Plan of Rehabilitation does not replace or supercede any provision of Article XIII ½ of the Code (215 ILCS 5/221.1, *et seq.*) or of any similar law enacted

by any state which is a "reciprocal state" as defined in 215 ILCS 5/221.1(1), except as specifically set forth in this Second Amended Plan.

Part P. Reservation of Rights

- 16.01 Nothing in the provisions of this Second Amended 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 Code and any amendments thereto.
- 16.02 Subject to the approval of the Supervisory Court, and with or without notice as the Supervisory Court shall order, the Rehabilitator may further amend this Second Amended Plan at any time.

Part Q. Rules of Construction

- 17.01 The headings and captions herein are inserted for convenience of reference only, and shall not serve to limit, expand or interpret paragraphs or parts to which they apply.
- 17.02 Words of the masculine, feminine and neuter gender, where the context requires, shall also mean and include the correlative words of other genders. Words importing singular number, where the context requires, shall also mean and include the plural number and vice versa.
- 17.03 The general rule that ambiguities are to be resolved against the primary drafting party shall not apply to this Second Amended Plan.
- 17.04 Whenever under the terms of this Second Amended Plan the time for performance of a condition falls upon a Saturday, Sunday or any Federal or State holiday, such time for performance shall be extended to the next business day.

17.05 Nothing in this Second Amended Plan shall be construed to cause any Claimant to have any greater right than that which it would have had if this Second Amended Plan had not been entered by order of the Supervisory Court.

Part R. Continuing Jurisdiction of Supervisory Court and Choice of Law

18.01 Throughout its pendency, the Supervisory Court shall have continuing jurisdiction over this Second Amended Plan, the distribution of General Assets and the rehabilitation of Amreco.

18.02 All matters arising out of or relating to the construction or interpretation of Article XIII or this Second Amended Plan shall be governed by the law of the State of Illinois. The Rehabilitator will apply prevailing choice-of-law rules to determine the substantive law applicable to determine issues involving the liability, coverage and value of Claims presented pursuant to Parts D and K of this Plan.

18.03 All challenges of, and disputes concerning, relating to or arising under this Second Amended Plan which have not been settled, compromised or adjourned between the parties shall be presented to the Supervisory Court and may not be submitted to arbitration.

18.04 In addition to any other remedies, any person who obstructs or interferes with the Director, Rehabilitator or Special Deputy in the conduct of Amreco's rehabilitation or the implementation of this Second Amended Plan shall be subject to the contempt powers of the Supervisory Court.

Part S. Finality Upon Entry of This Plan

- 19.01 Entry of this Second Amended Plan by the Supervisory Court shall be deemed an appealable order pursuant to Illinois Supreme Court Rule 304(b)(2) (735 ILCS 5/304(b)(2)). There is no just cause to delay enforcement of or appeal from this Second Amended Plan or any of the provisions contained herein.
- 19.02 Upon entry, the provisions, terms and conditions of this Second Amended Plan shall supersede the First Amended Plan, and the First Amended Plan shall have no further force or effect.

Respectfully submitted,

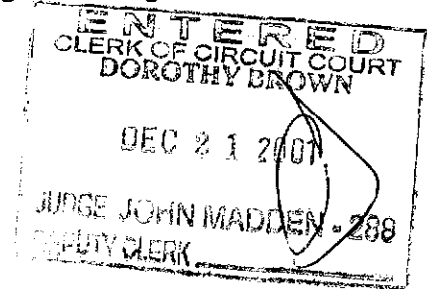
NATHANIEL S. SHAPO

Director of Insurance of the State of Illinois, acting solely
in his statutory and court-affirmed capacity as
Rehabilitator of American Mutual Reinsurance Company

By: _____
Cathleen M. Travis, His Special Deputy

ENTERED: _____

Judge Presiding



Stephen W. Schwab
PIPER MARBURY RUDNICK & WOLFE
203 North LaSalle Street, Suite 1800
Chicago, Illinois 60601
(312) 368-2150
(312) 630-7343 - fax
stephen.schwab@piperrudnick.com
Attorney No. 37115

D. Daniel Barr
Daniel A. Guberman
Counsel To The Special Deputy
222 Merchandise Mart Plaza, Suite 1450
Chicago, Illinois 60654
(312) 836-9500
Attorney No. 16819

which subordinated Guaranty Fund Surplus Promissory Notes shall be inferior and subordinate to each Surplus Draft.

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, in Rehabilitation**, an Illinois
domestic mutual property, casualty and fire
company

By: _____
As Rehabilitator