

**THE STATE OF NEW HAMPSHIRE**

**MERRIMACK, SS**

**SUPERIOR COURT**

**Docket No. 03-E-0112**

**In the Matter of the Liquidation of  
U.S. International Reinsurance Company**

**LIQUIDATOR'S MOTION FOR APPROVAL OF AGREEMENT  
CONCERNING NEW MEXICO SPECIAL DEPOSIT**

Roger A. Sevigny, Commissioner of Insurance for the State of New Hampshire, as Liquidator ("Liquidator") of U.S. International Reinsurance Company ("USI Re") hereby moves that the Court enter an order in the form submitted herewith approving the New Mexico Special Deposit Release Agreement (the "Agreement") regarding a special deposit in New Mexico, by and between the Liquidator and Eric P. Serna, New Mexico Superintendent of Insurance ("Superintendent"). A copy of the Agreement is attached as Exhibit A. As reasons for this motion, the Liquidator respectfully states:

1. The New Mexico deposit. To secure its obligations to New Mexico policyholders and creditors, USI Re made a special deposit in the amount of \$330,000, which was held in trust by the Superintendent pursuant to Section 59A-5-19 NMSA 1978 and other applicable New Mexico law. The special deposit was made for the benefit of New Mexico policyholders and other creditors. Affidavit of Peter A. Bengelsdorf, Special Deputy Liquidator, in Support of Motion for Approval of Agreement Concerning New Mexico Special Deposit ("Bengelsdorf Aff.") ¶ 3. This is a special deposit in that it is held for the security or benefit of one or more limited class of persons. See RSA 402-C:3, XII (definition of "special deposit claims").
2. Since USI Re's liquidation commenced, the Superintendent has maintained custody of this special deposit. No New Mexico claimants have filed claims in USI Re's

domiciliary proceeding, and the Superintendent concluded that there are not, nor will there be, any claims by those New Mexico claimants for whose benefit this money has been deposited and held in trust that would necessitate establishment of an ancillary receivership in New Mexico. Bengelsdorf Aff. ¶ 4.

3. Both parties wish to avoid the expense of establishing an unnecessary ancillary receivership in New Mexico, and the Superintendent thus agrees to release the special deposit under the terms of the Agreement. Bengelsdorf Aff. ¶ 5.

4. The Agreement. The Agreement addresses the Superintendent's release of the special deposit to the Liquidator. The parties agree that, as soon as possible upon this Court's approval of the Agreement, the Superintendent will release to the Liquidator the deposit and any proceeds thereof, including accrued interest but less any penalties for early withdrawal and administrative costs and fees. Agreement §§ 1-2; Bengelsdorf Aff. ¶ 6.

5. Under the Agreement, the Liquidator is to hold the special deposit in trust for any New Mexico claimants, as defined by Section 59A-5-19 NMSA 1978 and Chapter 59A, Article 10 NMSA 1978. Agreement § 3. On a first-priority basis, the Liquidator will honor any demand by the Superintendent for a refund of any amount up to the full amount of the special deposit if the Superintendent is required to incur fees, expenses, or costs, to administer, defend, or pay USI Re claims (including claims of a New Mexico insurance guaranty association), or to defend or pay any federal priority claim by any agency of the United States government regarding USI Re. Agreement § 4. One-hundred eighty days prior to the anticipated close of the domiciliary receivership, the Liquidator will give notice to the Superintendent and will refund to the Superintendent the amount of any unpaid demand against the deposit, up to the full amount of the special deposit. At this point, the trust will dissolve and the Liquidator will enter the balance

into the general assets of USI Re's estate. Agreement § 5. The Agreement is subject to Court approval. Agreement § 7; Bengelsdorf Aff. ¶ 7.

6. The Liquidator submits that the Agreement is fair and reasonable and that it is in the best interest of the policyholders and other creditors of USI Re. The Agreement provides for (a) the prompt and orderly return to the USI Re estate of a special deposit that does not need to be retained, thereby avoiding the expense of ancillary receivership, (b) appropriate access to the special deposit for the Superintendent in the event that claims by New Mexico claimholders do arise, and (c) the ultimate reversion to the USI Re estate of amounts not needed to pay claims secured by the special deposit. Bengelsdorf Aff. ¶ 8. This is consistent with the New Hampshire statutes concerning special deposits. See RSA 402-C:3, X and XII.

WHEREFORE, the Liquidator respectfully requests that this Court:

- A. Grant this Motion for Approval of Agreement Concerning New Mexico Special Deposit;
- B. Enter an Order in the form submitted herewith approving the Agreement; and
- C. Grant such other and further relief as justice may require.

Respectfully submitted,

ROGER A. SEVIGNY, COMMISSIONER OF  
INSURANCE OF THE STATE OF NEW  
HAMPSHIRE SOLELY AS LIQUIDATOR OF  
U.S. INTERNATIONAL REINSURANCE  
COMPANY,

By his attorneys,

KELLY A. AYOTTE  
ATTORNEY GENERAL

Christopher J. Marshall  
Civil Bureau  
New Hampshire Department of Justice  
33 Capitol Street  
Concord, NH 03301-6397  
(603) 271-3650



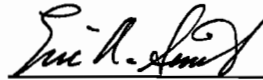
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J. David Leslie  
Eric A. Smith  
Rackemann, Sawyer & Brewster  
One Financial Center  
Boston, MA 02111  
(617) 542-2300

*December 22, 2005*

**Certificate of Service**

As no one other than counsel for the Liquidator have appeared in this proceeding (No. 03-E-0112), there are no persons on whom to serve this motion.



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Eric A. Smith

## NEW MEXICO SPECIAL DEPOSIT RELEASE AGREEMENT

This Agreement is made as of November 15, 2005 by and between the New Mexico Superintendent of Insurance ("Superintendent") and the domiciliary delinquency proceeding for the US International Reinsurance Company ("Insurer"), acting by the New Hampshire Commissioner of Insurance in his capacity as Insurer's duly appointed and authorized Liquidator ("Liquidator").

### RÉCITALS

WHEREAS, Insurer is subject to delinquency proceedings in its state of domicile, styled "In the Matter of the Liquidation of US International Reinsurance Company," Docket No. 03-E-0112, in the Superior Court of the State of New Hampshire, Merimack, SS.; and

WHEREAS, the Liquidator has been duly appointed and authorized to administer, manage and control Insurer and its receivership estate, and among other things to enter into this Agreement and to carry out all of its terms and conditions; and

WHEREAS, Insurer made a special deposit in trust for the benefit of New Mexico policyholders and creditors, pursuant to Section 59A-5-19 NMSA 1978 and other applicable New Mexico law; and

WHEREAS, said special deposit is held in the custody of the Superintendent; and

WHEREAS, New Mexico has sufficient assets to justify establishment of an ancillary receivership, and to pay fees, wages, expenses and costs of the ancillary receivership's administration; and

WHEREAS, the Superintendent has received information demonstrating to the Superintendent's satisfaction that there are not now known to be, and are not in the future anticipated to arise, any claims of New Mexico claimants for whose benefit the special deposit is made and held in trust pursuant to Section 59A-5-19 NMSA 1978 and Chapter 59A, Article 10 NMSA 1978 ("Claimants"), and other information demonstrating that in all other respects the establishment of an ancillary receivership for any purpose is unnecessary; and

WHEREAS, the claim filing deadline in the domiciliary proceeding was June 13, 2004, and no claims were filed by Claimants by that date or subsequently; and

WHEREAS, in reliance on the information the Superintendent has entered into this Agreement for the purpose of transferring to the Liquidator the New Mexico special deposit and/or proceeds thereof; and

WHEREAS, the parties desire to avoid the expense of establishing an unnecessary ancillary receivership in the state of New Mexico;

AGREEMENT

NOW, THEREFORE, in reliance upon the foregoing and in consideration of the mutual terms, conditions, covenants and obligations of this Agreement, the parties agree as follows:

1. The Superintendent shall return to the Liquidator the special deposit and/or proceeds thereof, including any accrued interest, less:
  - (a) any penalties for early withdrawal;
  - (b) the Superintendent's administrative fees and expenses, including but not limited to attorney's fees, expenses and costs, as well as wire transfer and express courier charges; and
  - (c) the Superintendent's other reasonable fees and expenses incurred to negotiate and carry out this Agreement, whether like or unlike the foregoing.
2. The special deposit and/or proceeds thereof, including unpaid interest, shall be released to the Liquidator in accordance with his instructions as soon as possible after this Agreement is fully executed and:
  - (a) approved in its entirety by court order in the above-referenced domiciliary delinquency proceeding; or
  - (b) upon the Superintendent's receipt of proof satisfactory to him that said court has previously authorized the Liquidator to enter into this Agreement without such approval.
3. The Liquidator shall hold the special deposit and/or proceeds thereof in trust for Claimants, subject to dissolution of the trust as provided in section 5.
4. During the existence of the trust, the Liquidator agrees to refund to the Superintendent or his designee, upon the Superintendent's demand, an aggregate amount up to the full amount returned pursuant to this Agreement, in payment of:
  - (a) fees, expenses and costs to administer, adjust, defend and/or pay claims with respect to Insurer against the Superintendent or Insurer, including but not limited to claims of New Mexico insurance guaranty associations; and
  - (b) fees, expenses and costs to defend and/or pay federal priority claims with respect

to Insurer asserted by the United States government, its agencies or instrumentalities against the State of New Mexico and/or the Superintendent, or their employees, representatives, counsel or agents, plus interest and penalties in connection therewith.

5. 180 days before the domiciliary receivership is anticipated to be closed, the Liquidator shall give notice to the Superintendent and shall refund any amounts still remaining unpaid which the Superintendent has demanded, if any, up to the amount remaining in trust. Thereupon the trust shall dissolve and the remaining balance in the trust shall be available to the Liquidator for inclusion in and distribution with the general assets of the domiciliary receivership.
6. The special deposit and/or proceeds thereof are received and held by the Liquidator in trust for Claimants, subject to Section 5. Refund obligations under Sections 4 and 5 shall be on an absolute first-priority basis up to the full amount returned to the Liquidator pursuant to this Agreement. It is specifically understood and agreed that the refund obligations set forth in Sections 4 and 5 are not contingent upon or subject to any pro-rata allocations which may be made in connection with other claims of the same or any other priority, nor are they contingent on the availability of sufficient funds to pay in full federal priority or other claims in the domiciliary receivership, but rather constitute a first lien on the special deposit trust for the benefit of the Superintendent and Claimants.
7. This Agreement shall not be binding or effective until:
  - (a) it is approved by court order entered in the above-referenced domiciliary delinquency proceeding; or
  - (b) the Superintendent receives satisfactory proof of the Liquidator's authority in accordance with section 2(b).
8. The Recitals are contractual, and not mere recitals.
9. This written Agreement sets forth the entire agreement of the parties. All prior or contemporaneous agreements, written or oral, are merged herein. All agreements not set forth in this written Agreement are void, and of no force and effect.
10. This Agreement may only be amended in writing executed by both parties.
11. This Agreement may be executed in counterparts, each of which shall be considered an original if all signatures are original signatures, and all of which shall constitute one document.
12. This Agreement is binding on the official successors-in-interest of the parties.
13. This Agreement may not be assigned.




14. This Agreement shall be construed in accordance with the substantive law of New Mexico, disregarding choice-of-law principles.

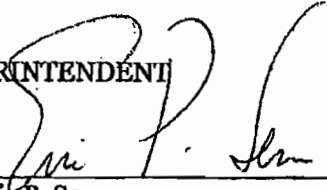
15. Disputes arising in connection with this Agreement may be resolved in the Santa Fe County District Court. The Liquidator consents to the jurisdiction of said court and agrees to accept service by certified mail, which service shall be complete upon mailing.

**LIQUIDATOR**

Roger A. Sevigny  
Commissioner of Insurance of  
the State of New Hampshire,  
as Liquidator of US International Reinsurance Company

By:  Date: November 16, 2005  
Peter A. Bengelsdorf  
Special Deputy Liquidator

**SUPERINTENDENT**

By:  Date: Nov. 21, 2005  
Eric P. Serna  
New Mexico Superintendent  
of Insurance