

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**

**MOTION FOR APPROVAL OF REINSURANCE
COMMUTATION AGREEMENT WITH INSCORP**

Roger A. Sevigny, Commissioner of Insurance for the State of New Hampshire, as Liquidator ("Liquidator") of U.S. International Reinsurance Co. ("USI Re"), hereby moves that the Court enter an order in the form submitted herewith approving a Commutation Agreement as amended by an Amendment of Commutation Agreement and Surplus Note Agreement (collectively, the "Agreement") between the Liquidator and The Insurance Corporation of New York ("Inscorp"). As reasons for this motion, the Liquidator respectfully states:

1. As a part of its business, USI Re entered into reinsurance agreements with numerous reinsurers under which Home ceded and the reinsurers assumed a portion of USI Re's obligations under policies of insurance or reinsurance agreements written by USI Re. Collection of reinsurance is the principal asset marshalling task of the USI Re liquidation. Confidential Affidavit of Peter A. Bengelsdorf, Special Deputy Liquidator, in Support of Approval of Reinsurance Commutation Agreement with Inscorp ("Bengelsdorf Confidential Affidavit") ¶ 2.

2. This motion requests approval of the Agreement between the Liquidator and Inscorp, a financially troubled reinsurer. A redacted copy of the Agreement (with economic terms removed) is attached hereto as Exhibit A. A complete copy of the Agreement is attached to the Bengelsdorf Confidential Affidavit submitted herewith under seal. The Agreement is subject to approval by the Court. Agreement ¶ 3. Bengelsdorf Confidential Aff. ¶ 3.

3. On December 31, 2004, Inscorp reported a significant surplus impairment in its Annual Statement. As a result, Inscorp submitted a Plan to Eliminate Capital Impairment pursuant to New York Regulation 141 (the "Plan") to the New York Superintendent of Insurance (the "Superintendent"). The Plan was initially approved by the Superintendent on June 1, 2005, and was amended in 2006. The Plan involved commutation offers to all cedents to Inscorp. Bengelsdorf Confidential Aff. ¶ 4.

4 Under New York law, Inscorp had to offer the same terms to all cedents and the terms were non-negotiable. The proposed commutations will only become effective when the Superintendent determines that sufficient cedents have accepted so that the effect of their commutations will restore Inscorp's surplus to the required minimum under New York law. Inscorp has stipulated to entry of a rehabilitation or liquidation if implementation of the Plan does not restore its surplus. Bengelsdorf Confidential Aff. ¶ 5.

5. Inscorp assumed business from USI Re in 1985 and 1986 under two Major Lines Casualty reinsurance treaties. USI Re also assumed reinsurance risk from Inscorp, and Inscorp has filed a proof of claim. Bengelsdorf Confidential Aff. ¶ 6.

6. The Bengelsdorf Confidential Affidavit summarizes the reasons that support the determination to enter the Agreement. Bengelsdorf Confidential Affidavit ¶¶ 4-11. For the reasons set forth in the Bengelsdorf Confidential Affidavit, the Liquidator submits that the Agreement is fair and reasonable and in the best interests of the policyholders and creditors of USI Re. See Bengelsdorf Confidential Aff. ¶ 11.

WHEREFORE, the Liquidator respectfully requests that this Court:

- A. Grant this Motion for Approval of Reinsurance Commutation Agreement with Inscorp;
- B. Enter an Order in the form submitted herewith approving the Commutation 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,
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J. David Leslie
Eric A. Smith
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February 28, 2007

Certificate of Service

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

A handwritten signature in black ink, appearing to read "Eric A. Smith", written over a horizontal line.

Eric A. Smith

REDACTED**COMMUTATION AGREEMENT**

This Commutation Agreement, is entered into by and between
The Insurance Corporation of New York, on behalf of itself, its predecessors, including without
limitation, The Reinsurance Corporation of New York and New RECO Reinsurance Corporation
of New York ("INSCORP"),

and

US International Reinsurance Company, in Liquidation
on behalf of itself, its
predecessors, and subsidiaries ("REINSURED"),

and

shall take effect subject to paragraphs 3 and 4 below.

WHEREAS, INSCORP, as reinsurer, entered into Reinsurance Agreements with the
REINSURED, it being understood and agreed that the term "Reinsurance Agreements"
comprises all reinsurance arrangements including, but not limited to, treaties, certificates, slips,
binders, or cover notes, whereby INSCORP, in consideration of the payment of premium, agreed
to reinsure risks insured by REINSURED; and

WHEREAS, INSCORP and REINSURED desire to fully and finally settle and commute
all their rights, obligations, and liabilities, both known and unknown, under the Reinsurance
Agreements; and

WHEREAS, INSCORP has offered to pay and REINSURED has agreed to accept the
consideration described below in full satisfaction of INSCORP's past, current, and future
liabilities and obligations under the Reinsurance Agreements; and

WHEREAS, pursuant to New York Insurance Law §1321 and Insurance Regulation 141
(11 NYCRR Part 128) ("Regulation 141"), the Superintendent has approved a Plan to Eliminate
INSCORP's Financial Impairment pursuant to Regulation 141(the "Plan"); and

WHEREAS, pursuant to Regulation 141, the Plan requires, among other things, that an
offer to commute all Reinsurance Agreements be made to each and every ceding insurer for
which INSCORP has Paid Losses and Loss Adjustment Expenses ("LAE")("Paid Losses") or
Known Case Losses (excluding Additional Case Reserves) and any corresponding LAE ("Case
Reserves") on its books as of December 31, 2004; and

WHEREAS, pursuant to Regulation 141, the Plan further requires that the terms of such
commutation agreements be the same for each and every ceding insurer; and

WHEREAS, pursuant to NYCRR §§ 128.4(a)(3) and 128.5(f), INSCORP has entered

into a stipulation with the Superintendent consenting to the entry of an order of rehabilitation or liquidation if the executed Commutation Agreements timely returned to INSCORP do not restore INSCORP's surplus to policyholders to the minimum required as determined in accordance with Regulation 141;

NOW, THEREFORE, it is agreed by and between INSCORP and REINSURED that in consideration of the full and final release set forth herein:

1. INSCORP shall pay to the REINSURED, and the REINSURED agrees to accept by way of commutation, the sum of [REDACTED] payable either ten (10) calendar days after the approval of the New Hampshire Superior Court of Merrimack County as set forth in paragraph 3 below, or (30) calendar days after the Superintendent's determination described in paragraph 4 below, whichever is later.
2. When this Commutation Agreement becomes effective, the parties' respective liabilities arising out of the Reinsurance Agreements will be commuted in consideration of INSCORP's payment as set forth above, notwithstanding anything in any of the Reinsurance Agreements to the contrary, and REINSURED shall thereby accept the sum set forth in paragraph 1 herein in full and final settlement of any and all amounts due or to become due REINSURED on the Reinsurance Agreements, and the Reinsured hereby recaptures all of the liabilities ever arising under the Reinsurance Agreements from their effective dates.
3. Notwithstanding anything herein to the contrary, it shall be a condition precedent to the legally binding effect and enforceability of this Commutation Agreement that the New Hampshire Superior Court of Merrimack County shall have approved its terms.
4. Subject to paragraph 3, above, this Commutation Agreement shall not become effective, and no consideration for this or any other Commutation Agreement shall be paid, until the Superintendent has made a determination pursuant to NYCRR § 128.5(b) that as a result of this and all other commutation proposals agreed to and executed by INSCORP's ceding insurers, INSCORP's surplus to policyholders has been restored to the required minimum.
5. REINSURED hereby releases and discharges INSCORP, its predecessors, including without limitation, The Reinsurance Corporation of New York and New RECO Reinsurance Corporation of New York, successors, agents, officers, directors, employees, attorneys, liquidator, receiver, administrators, and assigns from any and all liabilities and obligations arising under, or related to, the Reinsurance Agreements, whether such liabilities are known or unknown, reported or unreported, and whether currently existing or arising in the future, including, but not limited to, all claims, debts, demands, causes of action, duties, sums of money, covenants, contracts, controversies, agreements, promises, doings, omissions, damages, judgments, costs, expenses, and losses whatsoever arising under, or related to, the Reinsurance Agreements.
6. INSCORP hereby releases and discharges REINSURED, its predecessors, successors, agents, officers, directors, employees, attorneys, liquidators, receivers, or administrators, and assigns from any and all liabilities and obligations arising under the Reinsurance Agreements,

whether such liabilities are known or unknown, reported or unreported, and whether currently existing or arising in the future, including, but not limited to, all claims, debts, demands, causes of action, duties, sums of money, covenants, contracts, controversies, agreements, promises, doings, omissions, damages, judgments, costs, expenses, and losses whatsoever arising under, or related to, the Reinsurance Agreements.

7. INSCORP and REINSURED assume the risk of any mistake or fact with regard to the subject of this Commutation Agreement with regard to any of the facts or claims that are now unknown to the parties relating to this Agreement. Section 1542 of the California Civil Code provides that:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED THE SETTLEMENT WITH THE DEBTOR.

The parties explicitly agree that all rights under Section 1542 of the California Civil Code, and all rights under the laws of other states having similar provisions, are hereby expressly waived.

8. INSCORP and REINSURED agree that:

a. this Commutation Agreement operates as a full and final settlement and release of INSCORP's past, current, and future liabilities to REINSURED under the Reinsurance Agreements; and REINSURED covenants that it shall forever refrain from prosecuting, initiating, maintaining, or pressing any action, suit, arbitration, or claim based on any of the matters arising from the Reinsurance Agreements, provided, however, that this Commutation Agreement does not discharge obligations that have been undertaken by the terms of this Commutation Agreement itself;

b. both parties hereby waive any right to assert hereafter that any matter or claim released by this Commutation Agreement has, through ignorance, oversight, or error, been erroneously included, and

c. both parties hereby waive any rights under any law that may in any way limit the effect of the releases contained in this Commutation Agreement.

9. The rights, duties, and obligations set forth herein shall inure to the benefit of, and be binding upon, any and all of the parties' predecessors, successors, affiliates, officers, directors, employees, subsidiaries, stockholders, liquidators, trustees, receivers, attorneys, and assigns.

10. INSCORP and REINSURED expressly warrant and represent that:

- a. both parties are fully authorized to execute this Commutation Agreement;
- b. the person executing this Commutation Agreement has the necessary and appropriate authority to do so;
- c. there are no pending agreements, transactions, or negotiations to which either is a party that would render this Commutation Agreement, or any part thereof, void, voidable, or unenforceable;
- d. except as specifically noted herein, see previous paragraphs 3 and 4, no authorization, consent, or approval of any government entity is required to render this Commutation Agreement valid and binding upon them;
- e. no claim or loss being paid or settled by this Commutation Agreement has been previously assigned, sold, or transferred to any other person or entity;
- f. neither party has relied upon any statement, promise, warranty, representation, or assurance, oral or written, other than those contained in this Commutation Agreement;
- g. both parties have been given full and free access to all pertinent information;
- h. both parties relied exclusively on their own respective understandings, reviews, investigations, and analyses of all legal matters and factual information and documentation that they deemed material; and
- i. this Commutation Agreement contains a final and complete integration of all of the parties' previous expressions, incorporates any and all previous discussions, and constitutes the parties' entire and final agreement with respect to the Reinsurance Agreements.

11. REINSURED and INSCORP hereby agree to execute promptly, and without further consideration, any and all supplemental agreements, releases, affidavits, waivers, and other documents of any nature or kind that the other party may reasonably require in order to implement the provisions or objectives of this Commutation Agreement.

12. This Commutation Agreement:

- a. may be executed in multiple counterparts, each of which when so

executed and delivered shall be an original, but such counterparts together shall constitute one and the same instrument and agreement;

b. shall be governed by, and construed in accordance with, the laws of the State of New York;

c. may not be modified or amended, nor any of its provisions waived, except by an instrument in writing, signed by both parties; and

d. shall survive any determination that any discrete term or provision in the Commutation Agreement is unenforceable.

13. INSCORP and REINSURED expressly agree that the terms and conditions of this Commutation Agreement shall be confidential between the parties, and shall not be disclosed without the prior written consent of the other party, except where required by:

a. the New York Superintendent of Insurance;

b. any retrocessional or other insurance or reinsurance contract; or

c. any court, administrative tribunal, arbitration panel, or regulatory agency.

IN WITNESS WHEREOF, the parties have executed this Commutation Agreement in triplicate as of the day and year first written above.

The Insurance Corporation of New York

By: _____

Title: _____

Date: _____

US International Reinsurance Company in Liquidation

By: _____

Title: _____

Date: _____

SCHEDULE OF AMOUNTS PAID FOR COMMUTATION
OF REINSURANCE AGREEMENTS

	100%	Commutation %
Paid Losses	[REDACTED]	[REDACTED]
Case Reserves	[REDACTED]	
Funds Held	[REDACTED]	
Total	[REDACTED]	[REDACTED]
Less Premiums Due		[REDACTED]
Total Commutation Offer		[REDACTED]

**AMENDMENT OF COMMUTATION AGREEMENT
AND SURPLUS NOTE AGREEMENT**

WHEREAS, The Insurance Corporation of New York ("INSCORP") and US International Reinsurance Company ("USI Re" or "Reinsured") have entered into a Commutation Agreement pursuant to New York Insurance Law §1321 and Insurance Regulation §141 (11 NYCRR Part 128) ("Regulation 141"), a copy of which is annexed hereto (the "Commutation Agreement"); and

WHEREAS, the Reinsured has agreed to accept by way of commutation the sum of [REDACTED] (the "Cash Amount") under the terms and subject to the conditions set forth in the Commutation Agreement, including, but not limited to, the requirement that the Superintendent of Insurance of the State of New York (the "Superintendent") must determine that the annexed Commutation Agreement and the commutation agreements executed by all of INSCORP's other ceding insurers pursuant to New York Insurance Law 1321 and Regulation 141 (collectively, the "Commutation Agreements") have restored INSCORP's surplus to policyholders to the minimum required pursuant to Section 128.3(b) of Regulation 141; and

WHEREAS, due to the continued development of losses and loss reserves with respect to INSCORP's primary book of business, the Superintendent has not made such determination; and

WHEREAS, unless INSCORP's obligation to pay cash under the Commutation Agreements is converted to an obligation to issue surplus notes, INSCORP's Regulation 141 Plan to eliminate its capital impairment will not be approved by the Superintendent and

INSCORP will become subject to an order of rehabilitation or liquidation;

NOW, THEREFORE, the parties have agreed that:

Part I: Amendment of Commutation Agreement

1. Paragraph 1 of the Commutation Agreement is hereby amended in its entirety to read as follows:

"INSCORP shall deliver to the Reinsured and the Reinsured agrees to accept as consideration for commutation a surplus note in the form annexed hereto ("Surplus Note") in the principal amount of [REDACTED]. The Surplus Note shall be delivered thirty (30) calendar days after the Superintendent's determination described in paragraph 4 below. Upon the Superintendent's determination pursuant to NYCRR § 128.5(b) that as a result of this and all other commutation proposals agreed to and executed by INSCORP's ceding insurers, INSCORP's surplus to policyholders has been restored to the required minimum, INSCORP shall withdraw with prejudice its Proof of Claim dated June 11, 2004 submitted in connection with USI Re's liquidation in Merrimack County Superior Court, State of New Hampshire, Proof of Claim No. RAUS 702871 (the "POC"). Any Proof of Claim that INSCORP has filed in the USI Re estate, including the POC, shall be deemed resolved with prejudice by the Commutation Agreement and INSCORP agrees that it shall be forever barred and precluded from filing any subsequent Proofs of Claim in the USI Re estate."

2. In all other respects, the Commutation Agreement is hereby ratified and confirmed.
3. This Amendment of Commutation Agreement is subject to the prior approval of the Superintendent pursuant to New York Insurance Law §1307 (regarding the issuance of the Surplus Note) and New York Insurance Law §1321 (regarding the determination by the Superintendent of the restoration of INSCORP'S surplus to policyholders).

Part II: Surplus Note Agreement

1. Within thirty (30) calendar days after receiving the approval of the Superintendent set forth in paragraph 3 of "Part I" of this Agreement (Amendment of Commutation Agreement), INSCORP shall deliver to the Reinsured and Reinsured agrees to accept as consideration for the commutation a Surplus Note in the principal amount of [REDACTED]
2. Except as hereinafter provided, the principal amount of the Surplus Note shall be payable [REDACTED] from the date of the Surplus Note with [REDACTED] interest from the date of the Surplus Note to the date of payment at a rate of [REDACTED].
3. Such principal and interest accrued thereon shall be payable: (i) only out of INSCORP's free and divisible surplus; (ii) only if and to the extent that the free and divisible surplus (determined on a statutory basis in accordance with the New York Insurance Law) is sufficient for the payment thereof; and (iii) only with the prior written consent of the Superintendent in accordance with the applicable provisions of the New York Insurance Law. All sums payable to Reinsured hereunder shall be paid in United States dollars at the office of the Reinsured or at such other place as the Reinsured shall designate to INSCORP in writing.
4. In case of any insolvency, receivership, conservatorship, reorganization, readjustment

of debts, marshaling of assets and liabilities or similar proceedings, or any liquidation or winding up of the affairs of INSCORP, whether voluntary or involuntary, all other obligations and liabilities shall be entitled to be paid in full before any payment shall be made on account of the principal of, or interest on, the Surplus Note.

5. This agreement and the Surplus Note shall bind the parties and their respective successors and assigns and shall inure to the benefit of their respective successors and assigns.

6. The unpaid principal represented by the Surplus Note and the accrued interest thereon shall not form a part of the legal liabilities of INSCORP, shall not be the basis of any setoff, and shall be subordinated in right of payment to all other obligations and liabilities, whether now outstanding or hereafter incurred, and until repaid all statements published by INSCORP or filed with the Superintendent or with the insurance authorities of any other states in which INSCORP is or shall hereafter be licensed shall show as a footnote thereto the amount thereof then remaining unpaid.

7. This Agreement and the Surplus Note annexed thereto are subject to the prior approval of the Superintendent pursuant to New York Insurance Law §1307.

IN WITNESS WHEREOF, the parties have executed this Amendment of Commutation Agreement and Surplus Note Agreement as of the day and year set forth below.

THE INSURANCE CORPORATION OF NEW YORK

By: _____

Title: _____

Date: _____

US International Reinsurance Company

By: _____

Title: _____

Date: _____