

August 11, 1986

SUBJECT: INSURANCE

WITHDRAWN

CIRCULAR LETTER NO. 12 (1986)

To: ALL PROPERTY/CASUALTY INSURANCE COMPANIES AUTHORIZED TO WRITE GENERAL LIABILITY INSURANCE IN THIS STATE Re: POLICE PROFESSIONAL LIABILITY INSURANCE MARKET ASSISTANCE PROGRAM Omnibus legislation, designed to enhance the availability and affordability of vital liability insurance protection, has recently been enacted and signed into law by Governor Cuomo. The Insurance Department is in the process of implementing these new laws and the systems, such as flex-rating, they institute. My staff and I welcome your ideas and input.

Among the multiple components of this omnibus legislation is authority conferred upon the Superintendent of Insurance to activate involuntary joint underwriting for commercial risk, professional liability and public entity insurance markets, in the event that meaningful coverage proves to be unavailable in the voluntary markets, facilitated where appropriate by market assistance programs administered by the Superintendent. Should the voluntary approach fail, the JUA will be triggered. MAPs are temporary; JUAs tend to be more enduring. We believe the voluntary market can respond to the challenge, and should be given the opportunity to do so.

Clearly, there is now an urgent need for police professional liability coverage, and a market assistance program to help provide it. Some thirty local police forces and sheriff departments in this State are lacking this critical coverage. The current situation is intolerable, and must be quickly cured. Over the past months, we have explored and exhausted the specialty markets and all alternatives in this connection. Consequently; a customized market assistance program has been developed (see annexed materials), and we urge your prompt participation and cooperation.

Most of the leading companies doing business in this State have participated in the Municipal Market Assistance Program. Even as they continue to participate, the time has come for as many licensed carriers as possible to join these efforts. Since this Police Professional Liability Insurance Market Assistance Program will utilize a qualified servicing carrier and a quota share arrangement, it is not necessary that your company have the size, expertise or other capabilities to participate as a direct writer of the risk.

Because police professional liability represents a type of risk that qualifies as "extremely difficult to place in the voluntary market", to encourage your participation, I would contemplate application of special credits for insurers that voluntarily, through this MAP or otherwise, provide a market for this coverage, in the event that it becomes necessary to activate the JUA for this purpose.

The Police Professional Liability Insurance Market Assistance Program must be swiftly put into operation. Please review the enclosed materials, and transmit your response, no later than August 22, 1986, to the attention of: Lisa Solomon (212-602-0370)

Senior Insurance Examiner

Property a Casualty Insurance Bureau

New York State Insurance Department

160 West Broadway

New York, New York 10013

We believe that the MAP approach described within represents the most effective approach to the police professional situation; if appropriate, program adjustments can be made. If you have any questions, please contact Deputy Superintendent Richard Hsia (212-602-0414), or William Murray at Chubb (201-580-3440). Mr. Murray has agreed to serve as industry coordinator for these MAP efforts, under the auspices of this Department. We believe that these efforts will reinforce the positive effects of the omnibus legislation, foster consumer protection, and help promote a healthy and competitive insurance environment in New York State.

Very truly yours

JAMES P. CORCORAN SUPERINTENDENT OF INSURANCE

August 6, 1986

To: Chief Executive/Chief Underwriting Officers of New York Licensed Insurers

As you are probably aware, insurer representatives met with staff members from the New York Insurance Department on July 29, 1986 in an effort to forestall the activation of the Joint Underwriting Association by the Superintendent of Insurance as contemplated by the recent omnibus insurance/ tort reform legislation. At that meeting, a committee was appointed to develop a voluntary industry risk pooling mechanism utilizing a servicing carrier for those classes of business which the Superintendent was considering for JUA activation. That committee consists of representatives of the following insurers: Aetna, AIG, Chubb, Cigna, Frontier, Liberty Mutual, Nationwide, St. Paul, and Travelers.

There are two classes of business which are now problematical to the Superintendent: Police Professional and Monoline Liquor Liability. In a private session among representatives from roughly thirty-five insurers, AIG agreed to act as servicing carrier for the Police Professional and Frontier agreed to act similarly for the liquor. The committee met on August 5 to receive proposals from both AIG and Frontier with respect to the risk pooling arrangement and attached is AIG's proposal for your review.

We must emphasize that no one here involved sees this effort as anything other than a way to prevent activation of the New York JUA. In our judgment, the JUA would never be able to charge rates necessary to fund its losses and would eventually become a provider of choice for certain liability classes on the basis of price, thereby preventing any voluntary market from ever developing. Once activated, we would never be rid of it and its attendant problems. The risk sharing arrangement being proposed in this package of material will not make any of us any money, but it might well allow us to lose more slowly over a shorter period of time. The thrust of the arrangement will be to price the risks properly and through generous, non-subsidized premiums, to encourage a competitive voluntary market when the cycle turns, as it inevitably will.

The proposal enclosed only refers to Police Professional Liability; liquor will be next and there will undoubtedly be other kinds of liability insurance presented to the industry in the future. We badly need your support in the form of an underwriting commitment to participate.

Details, except as enclosed, are somewhat scarce. We anticipate that the N.Y. Fair Plain (NYPIUA) will handle the administration of the reinsurance in the same way that many reinsurance intermediaries run their reinsurance pools. That's the concept; it needs some fleshing out, but NYPIUA has been cooperative and the Superintendent supports it.

In my own judgment, a voluntary solution to some significant portion of the availability problem in New York, will cost us all a lot less money than a JUA. We will set reasonable underwriting standards and the Superintendent has acknowledged that some risks will simply be uninsurable. That's probably not as attainable through a JUA mechanism. We also contemplate making this facility sufficiently economically unattractive to producers that they will make a real effort to locate voluntary capacity as matter of their own economic interest; again, much more difficult in a JUA setting.

Please review, or have someone review, the attached material. You know what your company's share of JUA losses and expenses would be. Keep in mind that the assessment base is somewhat unusual -- "commercial risk, public entity and professional liability insurance." That definition encompasses all but a very few Annual Statement lines and involves insurers which write both property and liability exposures in the State. Moreover, the legislation setting up the JUA provides that the Superintendent may allow assessment credit to those insurers which voluntarily write risks which are extremely difficult to place. The Insurance Department has indicated that insurers which participate in this pooling arrangement might qualify for such credit, thereby increasing the JUA share of those which refuse.

In the interest of at least some brevity, I will not detail the other arguments in favor of participation. Time is very short with respect to the Police Professional and we urge you to indicate your company's willingness to participate in the risk-sharing arrangement for Police Professional by signing the enclosed "slip." Please indicate the maximum percentage you are prepared to take with the understanding that if the reinsurance is oversubscribed, everyone's share will be proportionately reduced. Keep in mind that many carriers have indicated their willingness to participate on condition that a substantial number of their brethren do too. We all do business in the State of New York and have an interest in a healthy and competitive insurance environment. That means no JUA being activated; this is our opportunity to prevent that activation from occurring.

Very truly yours,

William J. Murray

Vice President & Counsel,

Chubb & Son Inc.

For the Committee

LAW ENFORCEMENT AGENCY POLICE PROFESSIONAL LIABILITY

ELIGIBILITY

All publicly funded law enforcement agencies employed by political sub-divisions within the State of New York are eligible for this program.

All law enforcement agencies or personnel employed by the State of New York or the federal government are not eligible for this program.

COVERAGE

Coverage will be provided on a claims made policy form. The maximum limit of liability will be \$ 1,000,000 each incident subject to a \$ 1,000,000 annual aggregate. All defense expense is included within the limit of liability.

COMMISSION TO PRODUCERS

5%

SERVICING CARRIER

National Union Fire Insurance Company

The servicing carrier will retain 10% quota share participation in each policy. Ceding commission from reinsurers shall be 20%. At the time that commitments to participation reach 100%, the servicing carrier will provide the Insurance Department and state agents' associations the name and telephone number of the person to whom submissions can be directed. A signed, fully completed application will be required prior to quotation or commitment to coverage.

QUOTA SHARE REINSURANCE AGREEMENT

A draft copy of the proposed agreement is enclosed. The New York Property Insurance Underwriting Association will serve as the intermediary. All accounting reports and financial transactions will be handled by the Association. At the outset, all potential participants will be asked to authorize a maximum participation percentage. After all commitments are received, actual participation will be by pro ration of the maximum authorizations. Each participant's percentage will be subject to annual evaluation by the participants. Any reduction in authorizations not offset by corresponding increases by other participants shall result in termination of the Quota Share Agreement and the underwriting program.

PLACEMENT SLIP**POLICE PROFESSIONAL MARKET ASSISTANCE PROGRAM**

REINSURED:	National Union Fire Insurance Company of Pittsburgh, PA.
CLASSIFICATION OF BUSINESS COVERED:	Police Professional Liability business written by the Reinsured in cooperation with the Police Professional Market Assistance Program of New York State.
TERRITORY:	New York State
TERM & TERMINATION:	Continuous from 12:01 a.m. Eastern Standard Time, August, 1986. Treaty may be cancelled at any August by either party giving at least 90 days prior written notice. In the event of cancellation, Reinsurers shall continue to share in all business written prior to cancellation date until natural expiry of such business.
TYPE OF TREATY:	Quota Share
TREATY LIMIT:	\$ 1,000,000 (per policy, per risk, per incident).
REINSURER'S SHARE:	10.0%
REINSURED'S MAXIMUM	\$ 100,000

RETENTION:

REINSURER'S SHARE: 90.0%

REINSURER'S MAXIMUM \$ 100,000

LIMIT:

CEDING COMMISSION: 20.0%

REPORTING AND SETTLEMENT: Quarterly statements to be issued within 60 days after the close of the quarter and payment to be made within 90 days of the close of the quarter.

CASH LOSS CLAUSE: \$ 100,000

UNDERLYING POLICY FORM: Claims Made, Defense Within Limits, One Year Extended Reporting Period

Accepted % of session i.e., % of Gross Subject \$ 1,000,000 Liability

Reinsurer Authorized Signature

Title

Date

Reference No. Reinsurer Reinsured

INTERESTS AND LIABILITIES CONTRACT

to the

POLICE PROFESSIONAL LIABILITY QUOTA SHARE

REINSURANCE AGREEMENT

between

NATIONAL UNION FIRE INSURANCE COMPANY

OF PITTSBURGH, PA.

and

This Interest and Liabilities Contract is made this day of August, 1986 between National Union Fire Insurance Company of Pittsburgh, Pa. of 70. Pine Street, City of New York, County of New York, State of New York, hereinafter referred to as the Company and City of , of , County of , State of hereinafter referred to, as the Subscribing Reinsurer. WITNESSETH: In consideration of the mutual promises and covenants herein contained, the parties hereto agree as follows: The undersigned Subscribing Reinsurer shall have a % share in the Interest and Liabilities of the attached Police Professional Liability Quota Share Reinsurance Agreement, hereinafter referred to as the Agreement as of 12:01 a.m. Eastern Standard Time, this day of August, 1986. The share of the undersigned Subscribing Reinsurer in respect of the said Agreement shall be separate and apart from the shares of the other subscribing reinsurers and the

interests and liabilities of the Subscribing Reinsurer shall not be joint with those of the other subscribing reinsurers and in no event shall the Subscribing Reinsurer participate in the interest and liabilities of the other subscribing reinsurers.

The Company shall pay the Subscribing Reinsurer of all premiums due or which may become due the Subscribing Reinsurer in accordance with the attached Agreement.

This Interests and Liabilities Agreement shall attach and is subject to the term and cancellation provisions, if any, contained in the Police Professional Liability Quota Share Reinsurance Agreement.

The Police Professional Liability Quota Share Reinsurance Agreement to which this Agreement is attached, may be changed, altered, and amended as the parties may agree, thereby changing, altering, and amending the interests and liabilities of the Subscribing Reinsurer herein, provided such change, alteration and amendment is evidenced by amendment to this Agreement executed by the Company and the Subscribing Reinsurer.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed in duplicate by their duly authorized representatives' this day of August, 1986.

By

Company

Title

Subscribed and Sworn to before me this day of , 1986.

Notary Public

By

Company

Title

Subscribed and Sworn to before me this day of , 1986.

Notary Public

POLICE PROFESSIONAL LIABILITY QUOTA SHARE REINSURANCE AGREEMENT

This Police Professional Liability Quota Share Reinsurance Agreement is made between National Union Fire Insurance Company of Pittsburgh, Pa. of 70 Pine Street, City of New York, County of New York, State of New York, hereinafter referred to as the Company and the Subscribing Reinsurers subscribing to the respective Interests and Liabilities Agreement to which this Agreement is attached, hereinafter referred to as the Reinsurer.

WITNESSETH: In consideration of the mutual covenants and promises herein contained the parties hereto agree as follows:

ARTICLE I. Business Covered

A. The Company shall cede to the Reinsurer and the Reinsurer shall accept from the Company a 90% Quota Share participation of the net retained liability of the Company on policies, as defined herein, in force at, the inception of this

Agreement and issued or renewed during the term of this Agreement.

B. The liability of the Reinsurer shall commence obligatorily and simultaneously with that of the Company and shall apply wherever loss may occur during the currency of this Agreement.

C. This Agreement and the insurance and reinsurance issued hereunder within the terms of the Agreement applies to the Company's Police Professional Liability policies issued in connection with the New York Police Professional Market Assistance Program only, except as excluded in Article VIII and subject to the limitations stated in Article III.

ARTICLE II. Territory

This Agreement applies only to policies issued to insured or reinsureds located in the State of New York in the United States of America. ARTICLE III. Limits of Cover

A. The Reinsurer's liability under any one policy shall not exceed \$ 1,000,000.

B. The maximum liability which may be ceded by the Company to the Reinsurer under this Agreement in respect of any one risk, any one insured is 90% of \$ 1,000,000.

ARTICLE IV. Term and Cancellation

A. This Agreement is effective as of 12:01 a.m. Eastern Standard Time, August , 1986, and applied to the new and renewal business of the Company written subsequent to the time and date mentioned hereinabove and shall continue in full force and effect until terminated as hereinafter provided. The Reinsurer shall remain liable on the business then in force until the natural expiry of the policies on the. Reinsurer's share of losses arising out of all such business.

B. Either party may cancel this Agreement as of or any subsequent by giving notice in writing at least ninety days prior to such date stating to the other its desire to effect such cancellation.

C. In the event of cancellation of this Agreement, the Reinsurer shall not be liable for any losses occurring under new and renewal policies becoming effective after the date of cancellation. The Reinsurer shall remain liable for losses occurring after the date of cancellation on all policies in force at such date until the expiration or prior termination of such policies.

D. Every notice of termination shall be given by registered letter addressed to the intended recipient at such recipient's address as hereinabove set forth. In determining whether the requisite number of days' notice has been given in any case, the date of termination shall be counted but the date of mailing shall not.

E. Notwithstanding the termination of this Agreement as hereinabove provided, the provisions of this Agreement shall continue to apply to all unfinished business hereunder to the end that all obligations and liabilities incurred by each party here under prior to such termination shall be fully performed and discharged.

This Agreement is attached to the respective Interests and Liabilities Contract.

F. It is agreed, however, that either party may terminate this Agreement forthwith in the event that:

1. One party should at any time become insolvent, or suffer any impairment of capital, or file a petition in bankruptcy or go into liquidation or rehabilitation, or have a receiver appointed, or be acquired or controlled by any other insurance company or organization, or

2. Termination under this Section "F" shall be effected by written notice of cancellation to the other party containing

instructions as to mode of cancellation, i.e. a run-off basis or on a cut-off basis with portfolio settlement, if any.

G. This Agreement shall automatically terminate if the Reinsurer's participation shall fall below ninety percent of \$ 1,000,000.

H. If any law or regulation of the Federal or State or Local Government of any jurisdiction in which the Company is doing business shall render illegal the arrangements made in this Agreement, the Agreement can be terminated immediately, insofar as it applies to such jurisdiction, by the Company's giving notice to the Reinsurer to such effect.

ARTICLE V. Excess of Original Policy Limits

A. The Company shall be indemnified by the Reinsurer within the limits hereof, in connection with any loss in excess of the limit of its policy, such loss in excess of the limit having been incurred because of failure by the Company to settle within the policy limit or by reason of alleged or actual negligence, fraud or bad faith in rejecting an offer of settlement or in the preparation of the defense or in the trial of any action against an insured or reinsured or in the preparation or prosecution of an appeal consequent upon such action.

B. This Article shall not apply where the loss has been incurred due to the fraud of a member of the board of directors or a corporate officer, of the Company acting individually or collectively or in collusion with any individual or corporation or any other organization or party involved in the presentation, defense or settlement of any claim covered hereunder.

C. For the purpose of this Article, the word 'Loss' shall be defined as any amounts for which the Company would have been contractually, liable to pay had it not been for the limit of the policy.

ARTICLE VI. Extra Contractual Obligations

A. This Reinsurance shall exclude all cover in respect of Extra Contractual Obligations howsoever arising, such Extra Contractual Obligations being defined as any award made by a court of competent jurisdiction against an Insurer or Reinsurer, which award is not within the coverage granted by any insurance and/or reinsurance contract made between the parties in dispute.

B. Notwithstanding the foregoing in consideration of an additional premium of \$ 1.00 this Reinsurance shall extend to cover any loss arising from a 'Claims Related Extra Contractual Obligation':

2. included by the Company where it has paid his share of a "Claims Related Extra Contractual Obligation" awarded against one or more of its Co-Insurers.

C. It is warranted that any recovery under this Reinsurance in respect of "Claims Related Extra Contractual Obligation" shall only be for that part of any award which corresponds to the Company's share of the insurance and/or reinsurance policy and/or contract giving rise to the award, and all proportional protection effected by the Company shall provide or shall be deemed to provide pro-rata coverage for such obligations.

D. This reinsurance shall also extend to cover all loss from Extra Contractual Obligations howsoever arising where the loss is incurred by the Company as a result of its participation in any insurance or reinsurance which provides cover for such loss, it being understood and agreed that such result from a contractual liability incurred by the Company.

E. A "Claims Related Extra Contractual Obligation" shall be defined as the amount awarded against an Insurer or Reinsurer found liable by a court of competent jurisdiction to pay damages to an Insured or Reinsured' in respect of the conduct of a claim made under an insurance and/or reinsurance policy and/or contract where such liability has arisen because of:

1. the failure of the Insurer or Reinsurer to agree or pay a claim within the policy limits or to provide a defense against such claims as required by law or,
2. bad faith or negligence in rejecting an offer of settlement or
3. negligence or breach of duty in the preparation of the defense or the conduct of a trial or the preparation or prosecution of any appeal and/or subrogation and/or any subsequent action resulting these from.

F. There shall be no liability under this Reinsurance in respect of:

1. any assumption of liability by way of participation in any mutual scheme designed specifically to cover Extra Contractual Obligation or,
2. any Extra Contractual Obligation, arising from the fraud of a director, officer or employee of the Company acting individually or collectively or in collusion with an individual or corporation or with any other organization or party involved in the presentation defense or settlement of any claim.

G. Any loss arising under this Reinsurance in respect of "Claims Related Extra Contractual Obligations" shall be deemed to be a loss arising from the same event as that giving rise to the claim to which the Extra Contractual Obligations is related; and recovery of, such loss hereunder will be in the same proportion as the subject matter business of this reinsurance.

ARTICLE VII. Retention

The Company shall retain net for its own account 10% on each risk reinsured hereunder, said net retention unreinsured in any way other than by catastrophe reinsurance.

ARTICLE VIII. Exclusions

The Reinsurance provided under this Agreement does not apply to:

- A. Credit, Financial Guarantee and Insolvency.
- B. Any Insolvency Fund as per attached Insolvency Funds Exclusion Clause.
- C. Any loss or liability accruing to the Company directly or indirectly, and whether as insurer or member, of any Pool, Syndicate, Association or Bureau.
- D. Liability under provisions of the Nuclear Incident Exclusion Clause Liability Reinsurance, a copy of which is attached to this Agreement.
- E. Loss or damage which is occasioned by war, invasion hostilities, acts of foreign enemies, civil war, rebellion, insurrection, military or usurped power, or martial law, or confiscation by order of any government or public authority, but not excluding liability for loss or damage which would be covered under a standard form of policy containing a standard war exclusion clause.

ARTICLE IX. Definitions

A. The term "Policies" is defined herein as any and all binders, certificates, contracts or policies of insurance or reinsurance classified by the Company as business written under this Agreement.

B. The term "net premiums written" is defined herein as a gross premiums and additional premiums less return

premiums are less premium ceded on all facultative reinsurance on the business covered under this Agreement.

C. The term "incident" is defined herein as the initial act or acts attributable to a specific alleged crime or complaint resulting in action by the Insured, which crime or complaint can be fixed as to time and place, and any subsequent acts which directly relate to or arise out of the original crime or complaint.

D. The term "net retained liability" as used herein means' the remaining portion of the Company's gross liability under each policy after deducting all reinsurances which inure to the sole benefit of the Company.

The Company shall cede to the Reinsurer a pro rata share of its premium and additional premiums, if any, on policies becoming effective on and after in respect to business covered hereunder and the Reinsurer shall refund to the Company a pro rata share of each return premium.

ARTICLE XI. Ceding Commission

A. The Reinsurer shall allow the Company a ceding commission of 20% on the written premiums ceded under this Agreement. On all return premium the Company shall return to the Reinsurer the commission allowance of 20%.

B. The commission allowance which the Reinsurer makes to the Company on the business ceded under this Agreement includes provision for all taxes and any other expenses whatsoever, except allocated loss and loss adjustment expenses.

ARTICLE XII. Losses, Loss Adjustment Expenses and Salvage

A. The Company shall adjust, settle or compromise all claims and losses. All such adjustments, settlements, and compromises, including ex gratis payments, shall be binding on the Reinsurer in proportion to its participation. The Company shall likewise commence, continue, defend, compromise, settle or withdraw from actions, suits or proceedings and generally do all such matters and things relating to any claim or loss as in its judgment may be beneficial or expedient, and all payments made and costs and expenses incurred in connection therewith or in taking legal advice therefore (including the pro rata share, according to the time occupied in adjusting such loss, of salaries and expenses of the Company's field employees and salaried adjusters who have no administrative duties, and expenses of the Company's officials incurred in connection with the loss but excluding salaries of the Company's officials and regular office employees and office expenses of the Company) shall be shared by the Reinsurer proportionately. The Reinsurer shall, on the other hand, benefit proportionately from all reductions of losses by salvage, compromise or otherwise.

B. If the total amount due to the Company for loss or losses recoverable under this Agreement for any one loss occurrence is in excess of \$ 100,000, each subscribing reinsurer subscribing to the respective Interests and Liabilities Agreement to which this Agreement is attached will, upon demand and receipt of reinsurance proofs of loss, forthwith remit the amount due including but not limited to amounts less than \$ 100,000, otherwise losses shall be carried to account as otherwise provided herein.

C. In the event of a loss intimated to the Company or its agents before an entry has been made in the records of the Company, the Company shall be entitled to claim on the Reinsurer in conformity with the limits which the Company usually retains upon similar risks or subjects of insurance as established by its practices.

ARTICLE XIII. Reports and Remittances

A. The Company will provide the Reinsurer with all necessary data respecting premiums and losses, including reserves thereon, as at dates and on forms mutually acceptable to the Company and the Reinsurer.

B. The Company. shall render a quarterly account within sixty days after the end of each calendar quarter

summarizing the following information relating to the business covered under this Agreement:

1. Statement of premiums written and earned during the quarter;
2. Statement of commissions allowed during the quarter;
3. The Reinsurer's share of losses plus loss expenses paid, less salvage received and any balance due the Reinsurer, as indicated by the aforesaid account, shall be remitted to the Reinsurer with the account.
4. Reinsurer's share of losses outstanding at the end of the quarter.

C. Payment by the Reinsurer of its proportion of loss and loss expenses paid less salvage received by the Company will be made by the Reinsurer to the Company within ninety days of the close of the quarter.

D. As soon as possible following the end of each agreement year, the Company shall furnish the following information to the Reinsurer for the agreement year:

1. Summary of written premiums ceded,
2. Summary of premiums earned,
3. Summary of loss and loss adjustment expense paid and outstanding, segregated by the agreement year in which the loss occurred, and
4. Any other information which the Reinsurer may require for its Annual Convention Statement which may be reasonably available to the Company.

ARTICLE XIV. Currency

All payments hereunder shall be made in United States currency.

ARTICLE XV. Errors and Omissions

Any inadvertent neglect, delay, error or omission on the part of the Company shall not invalidate the reinsurance under this Agreement or be held to relieve either party hereto from any liability which would attach to it hereunder if such neglect, delay, error or omission is rectified upon discovery by an official of the Company.

ARTICLE XVI. Follow the Fortunes Clause

A. The Reinsurer's liability shall attach simultaneously with that of the Company, and all reinsurances for which the Reinsurer shall be liable by virtue of this Agreement shall be subject in all respects to the same risks, terms, conditions, interpretations, assessments, waivers, and to the same modifications, alterations and cancellations, as the respective insurance (or reinsurances) of the Company to which such reinsurances relate, the true intent of this Agreement being that the Reinsurer shall, in every case to which this Agreement applies and in the proportions specified herein, follow the fortunes of the Company.

B. Nothing herein shall in any manner create any obligations or establish any rights against the Reinsurer in favor of any third parties or any persons not parties to this reinsurance agreement.

ARTICLE XVII. Insolvency Clause

In the event of the insolvency of the Company, reinsurance under this Agreement shall be payable by the Reinsurer (on the basis of the liability of the Company under contract or contracts reinsured without diminution because of the insolvency of the Company) to the Company or to its liquidator, receiver, or statutory successor, except as provided by Section 4118a of the New York Insurance Law or except:

(a) where the Agreement specifically provides another payee of such reinsurance in the event of the insolvency of the Company, and

(b) where the Reinsurer, with the consent of the direct insured or insureds, has assumed such policy obligations of, the Company as direct obligations, of the Reinsurer to the payees under such policies and in substitution for the obligations of the Company to such payees.

It is agreed, however, that the liquidator or receiver or statutory successor of the insolvent Company shall give written notice to the Reinsurer of the pendency of a claim against the insolvent Company on the contract or contracts reinsured within a reasonable time after such claim is filed in the insolvency proceeding and that, during the pendency of such claim the Reinsurer may investigate such claim and interpose at their own expense in the proceeding where such claim is to be adjudicated, any defense or defenses which they may deem available to the Company or its liquidator or receiver or statutory successor. The expense thus incurred by the Reinsurer shall be chargeable, subject to court approval against the insolvent Company as part of the expense of liquidation to the extent of a proportionate share of the benefit which may accrue to the Company solely as a result of the defense undertaken by the Reinsurer.

ARTICLE XVIII. Self-Insured Obligations

A. As respects all business the subject matter hereof, where the coverage has been agreed upon between the Company and the Reinsurer this Agreement shall cover all obligations of the Company assumed by it as a self-insurer (or self-insured obligations in excess of any valid and collectible insurance available to the Company) to the same extent as if all types of insurance covered by this Agreement were afforded under the broadest form of agreements issued by the Company.

B. Any insurance or reinsurance wherein the Company hereby reinsured and/or its affiliated and/or subsidiary companies are named as the Insured or Reinsurer party, whether alone or jointly with some other party, shall be deemed to be an insurance or reinsurance coming within the scope of this Agreement, notwithstanding that no legal liability may arise in respect thereof by reason of the fact that the Company hereby reinsured and/or its affiliated and/or subsidiary companies are named as the Insured or Reinsured party or one of the Insured or Reinsured Parties.

ARTICLE XIX. Residual Markets Clause

A. The Reinsurer shall bear and remit to the Company as its proportionate share of any assessments, regardless of the basis of assessment, levied upon the Company by the governing authority of any mandatory insurance pool or plan, or state administered or sponsored insolvency or guaranty fund, to which the Company is required to belong, or in which the Company is required to participate, by reason of its issuing contracts of insurance on risks reinsured hereunder. For the purpose of this Agreement, mandatory insurance pool or plan shall mean any plan of insurance mandated by statute or regulation for the purpose of providing a source of insurance to persons, natural or otherwise, to whom such insurance would otherwise be unavailable in accordance with standards contemplated by such statute or regulation, including, but not limited to, so-called Assigned Risk plans, Pair Plans, Joint Underwriting Association, Worker's Compensation Pools and Windstorm Pools.

B. Allocations of assessments to business covered under this Agreement shall be calculated by the Company in an equitable and consistent fashion, and shall be applied to ceded premiums, losses and expenses as appropriate.

ARTICLE XX. Arbitration

All disputes or differences arising out of the interpretation of this Agreement shall be submitted to the decision of two arbitrators, one to be chosen by each party and in the event of the arbitrators failing to agree, to the decision of an umpire to be chosen by the arbitrators. The arbitrators and umpire shall be active or retired executive officials of fire or casualty insurance or reinsurance companies. If either of the parties fails to appoint an arbitrator within one month after being required by the other party in writing to do so, or if the arbitrators fail to appoint an umpire within one month of a request in writing by either of them to do so, such arbitrator or umpire, as the case may be, shall at the request of either party be appointed by a Justice of the Supreme Court of the State of New York.

The Arbitration proceeding shall take place in New York, New York. The applicant shall submit its case within one month after the appointment of the court of arbitration, and the respondent shall submit his reply within one month after the receipt of the claim. The arbitrators and umpire are relieved from all judicial formality and may abstain from following the strict rules of law. They shall settle any dispute under the Agreement according to an equitable rather than a strictly legal interpretation of its terms and their decision shall be final and not subject to appeal.

Each party shall bear the expenses of its arbitrator and shall jointly and equally share with the other the expenses of the umpire and of the arbitration.

This Article shall survive the termination of this Agreement.

ARTICLE XXI. Offset Clause

Each party hereto shall have, and may exercise at any time and from time to time, the right to offset any balance or balances, whether on account of premiums or on account of losses or otherwise, due from each party to the other (or, if more than one, any other) party hereto under this Agreement, provided however, that in the event of the insolvency of a party hereto, offsets shall only be allowed in accordance with the provisions of Section 7427 of the Insurance law of the State of New York.

ARTICLE XXII. Loss Reserves

(This clause applies only to those Reinsurers who cannot qualify for credit by any State or any other governmental authority having jurisdiction over, the Company's loss reserves).

A. As regards policies and bonds issued by the Company coming within the scope of this Agreement, the Company agrees that when it shall file with the Insurance Department or set up on its books reserves for losses which it shall be required to set up by law it will forward to the Reinsurer a statement showing the proportion of such loss reserves which is applicable to them. The Reinsurer hereby agrees that they will apply for and secure delivery to the Company a clean irrevocable Letter of Credit issued by any bank acceptable to the governmental authority having jurisdiction over the Company's loss reserves in an amount equal to the Reinsurer's proportion of said loss reserves.

B. The Company agrees to use and apply any amounts which it may draw upon such Credit for the following purposes only:

1. To pay the Reinsurer's share of and to reimburse the Company for the Reinsurer's share of any liability for loss reinsured by this Agreement.
2. To make refund of any sum which is in excess of the actual amount required to pay Reinsurer's share of any liability reinsured by this Agreement.

C. The designate bank shall have no responsibility whatsoever in connection with the propriety of withdrawals made by the Company on the disposition of funds withdrawn, except to see that withdrawals are, made only upon the order of properly authorized representatives of the Company.

ARTICLE XXIII. Access to Records

The Reinsurer or its duly appointed representatives shall have free access at all reasonable times to such books and records of the Company and its departmental or branch offices as shall reflect premium and loss transactions of the Company for the purpose of obtaining any and all information concerning this Agreement or the subject matter hereof.

ARTICLE XXIV. Tax

In consideration of the terms under which this Agreement is issued, the Company undertakes not to claim any deduction of the premium hereon when making Canadian tax returns or when making tax returns, other than Income or Profits Tax returns, to any State or Territory of the United States or to the District of Columbia.

ARTICLE XXV. Intermediary

New York Property Insurance Underwriting Association is hereby recognized as the Intermediary negotiating this Agreement for all business hereunder. All communications (including but not limited to, notices, statements, premiums, return premiums, commissions, taxes, losses, loss adjustment expense, salvages, and loss settlements) relating thereto shall be transmitted to the Company or the Reinsurer through [name and address]. Payments by the Company to the Intermediary shall constitute payment to the Reinsurer to the extent of such payments. Payments by the Reinsurer to the Intermediary shall only constitute payment to the Company to the extent that such payments are actually received by the Company.

ARTICLE XXVI. Execution

This Agreement is executed by the Company and by each Reinsurer by the signing, in duplicate, the Interests and Liabilities Contract to which this Agreement is attached.