

~~THE COLONIAL INSURANCE COMPANY~~
Cologne Reinsurance Company (Dublin) Ltd.

2000

AGGREGATE LIABILITY ADVERSE LOSS DEVELOPMENT
AGREEMENT OF REINSURANCE

between

COLOGNE REINSURANCE COMPANY (DUBLIN) LIMITED

An Irish corporation
having its principal offices at
1 George's Dock
I.F.S.C.
Dublin 1, Ireland

(the "Company")

and

NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH
a Pennsylvania corporation

having its principal offices at
175 Water Street, New York, New York, United States 10038

(the "Reinsurer")

In consideration of the promises set forth in this Agreement, the parties agree as follows:

Article I - SCOPE OF AGREEMENT

As a condition precedent to the Reinsurer's obligations under this Agreement, the Company shall cede to the Reinsurer the business described in this Agreement, and the Reinsurer shall accept such business as reinsurance from the Company. The terms of this Agreement shall determine the rights and obligations of the Company.

Article II - PARTIES TO THE AGREEMENT

This Agreement is solely between the Company and the Reinsurer. When more than one Company is named as a party to this Agreement, the first Company named shall be the agent of the other companies as to all matters pertaining to this Agreement. Performance of the obligations of each party under this Agreement shall be rendered solely to the other party. However, if the Company becomes insolvent, the liability of the Reinsurer shall be modified to the extent set forth in the article entitled INSOLVENCY OF THE COMPANY. In no

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instance shall any insured or reinsured of the Company or any claimant against an insured or reinsured of the Company have any rights under this Agreement.

Article III - BUSINESS SUBJECT TO THIS AGREEMENT

This Agreement shall apply to Ultimate Net Loss which the Company is or becomes obligated to pay under the Original Reinsurance Contracts written by the Company and listed in Schedule A.

Article IV - TERM

This Agreement shall become effective at 12:01 a.m., Central European Time on December 1, 2000 and shall remain in force and effect until the obligations hereunder have been discharged.

Article V - LIABILITY OF THE REINSURER

The Reinsurer shall pay to the Company 50% of the Company's Net Retained Liability for Ultimate Net Loss paid by the Company on and after December 1, 2000 on the business reinsured hereunder, subject to an overall limit of liability to the Reinsurer of US \$300,000,000.

Article VI - DEFINITIONS

- (a) **Ultimate Net Loss** means the sum actually paid or payable by the Company in settlement of losses for which it is liable under the Original Reinsurance Contracts, including Allocated Adjustment Expense, after deduction of salvage, subrogation and other recoveries and after deduction of amounts due from all other reinsurance, whether collectible or not. If the Company becomes insolvent, this definition shall be modified to the extent set forth in the article entitled **INSOLVENCY OF THE COMPANY**.

Notwithstanding the provisions of the article entitled **MANAGEMENT OF CLAIMS AND LOSSES**, this term shall also include 100% of Losses in Excess of Policy Limits and 100% of Extra Contractual Obligations.

Nothing in this definition shall imply that losses are not recoverable under this Agreement until the Company's Ultimate Net Loss has been finally ascertained.

- (b) **Allocated Adjustment Expense** means expenditures by the Company within the terms of the Company's policies in the direct defense of claims and in connection with Losses in Excess of Policy Limits and Extra Contractual Obligations and as allocated to an individual claim or

loss (other than for office expenses and for the salaries and expenses of employees of the Company or of any subsidiary or related or wholly owned company of the Company) made in connection with the disposition of a claim, loss, or legal proceeding including investigation, negotiation, and legal expenses; court costs; prejudgment interest; and postjudgment interest.

(c) **Losses in Excess of Policy Limits and Extra Contractual Obligations**

- (1) "Loss in Excess of Policy Limits" means a payment made to a third party claimant in excess of the policy limit which the Company is legally obligated to pay resulting from an action taken by the insured or assignee arising from a third party claimant being awarded an amount in excess of the Company's policy limit as a result of the Company's failure to settle within the policy limit or of the Company's alleged or actual negligence or bad faith in rejecting an offer of settlement or in the preparation of the defense or in the trial of any action against its insured or in the preparation or prosecution of an appeal consequent upon such action.
- (2) "Extra Contractual Obligation" means a loss which the Company is legally obligated to pay, which is not covered under any other provision of this Agreement and which arises from the Company's handling of any claim on the business reinsured hereunder.

The date on which a Loss in Excess of Policy Limits or an Extra Contractual Obligation is incurred by the Company shall be deemed, in all circumstances, to be the date of the original Occurrence.

There shall be no coverage hereunder where the Loss in Excess of the Policy Limit or the Extra Contractual Obligation has been incurred due to the fraud or criminal conduct of a member of the Board of Directors, a corporate officer of the Company, or any other employee of the Company, acting individually or collectively or in collusion with any individual or corporation or any other organization or party involved in the investigation, defense or settlement of any claim covered hereunder.

Any insurance or reinsurance, whether collectible or not, which indemnifies or protects the Company against claims which are the subject matter of this definition and any contribution, subrogation, or recovery shall inure to the benefit of the Reinsurer and shall be deducted to arrive at the amount of the Company's Net Loss.

- (d) **Occurrence** means each accident or occurrence or series of accidents or occurrences arising out of one event regardless of the number of employees or employers involved, except as modified below.

As respects an occupational or other disease or cumulative injury under workers' compensation or employers' liability policies for which the employer is liable:

- (1) Which arises from a specific sudden and accidental event limited in time and place, such occupational or other disease suffered by one or more employees of one or more employers shall be deemed to be an Occurrence within the meaning of this Agreement and the date of Occurrence shall be deemed to be the date of the sudden and accidental event.
- (2) Which does not arise from a specific sudden and accidental event limited in time and place, such occupational or other disease or cumulative injury shall be deemed to be an Occurrence within the meaning of this Agreement, and the date of Occurrence shall be deemed to be the date of the beginning of the disability for which compensation is payable if the case is compensable under the Workers' Compensation law; or the date that disability due to said disease actually began if the case is not compensable under the Workers' Compensation law.

Each case of an employee contracting such occupational or other disease or cumulative injury for which the employer insured by the Company is held liable shall be considered a separate Occurrence regardless of the date of loss.

- (e) **Original Reinsured** means the insurance company or reinsurance company to which the Company issued an Original Reinsurance Contract.

(f) **Original Reinsurance Contract** means all binders, policies, certificates, agreements, treaties, bonds, or contracts of reinsurance or retrocession authorized by the Company to Original Reinsureds under the same Reinsurance Form covering the same liability, whether issued in one layer or more than one layer, and appearing on Schedule A.

(g) **Reinsurance Form** means the type of liability reinsurance afforded by the Company to its cedants and retrocedants.

(h) **Net Retained Liability** means, and this Agreement shall only apply to, that portion of any Original Reinsurance Contract covered by this Agreement which the Company retains net for its own account, and in calculating Ultimate Net Loss only loss or losses in respect of that portion of any insurance or reinsurance which the

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Company retains net for its own account shall be included. It is understood and agreed that the amount of the Reinsurer's liability under this Agreement shall not be increased due to the Company's failure to retrocede in accordance with its normal practice, nor by reason of the inability of the Company to collect from any other reinsurer, whether specific or general, any amounts which may have been due from them, whether that inability arises from the insolvency of the other reinsurer or otherwise.

Article VII - EXCLUSIONS

This Agreement shall not apply to any liability excluded by the Original Reinsurance Contracts.

Article VIII - MANAGEMENT OF CLAIMS AND LOSSES

The Company shall investigate and settle or defend all claims and losses. When requested by the Reinsurer, the Company shall permit the Reinsurer, at the expense of the Reinsurer, to be associated with the Company in the defense or control of any claim, loss, or legal proceeding which involves or is likely to involve the Reinsurer. All payments of claims or losses by the Company within the terms and limits of its policies which are within the limits set forth in the applicable Agreement shall be binding on the Reinsurer, subject to the terms of this Agreement.

Article IX - RECOVERIES

The Company shall pay to or credit the Reinsurer with the Reinsurer's portion of any recovery obtained from salvage, subrogation, or other insurance. Allocated Adjustment Expense for recoveries shall be deducted from the amount recovered. However, if the Allocated Adjustment Expense incurred in obtaining recoveries exceeds the amount recovered, if any, the excess Allocated Adjustment Expense shall be apportioned between the parties in proportion to the liability of each party for the loss before the recovery was obtained.

The Reinsurer shall be subrogated to the rights of the Company to the extent of its loss payments to the Company. The Company agrees to enforce its rights of salvage, subrogation, and its rights against insurers or to assign these rights to the Reinsurer.

Recoveries under this Agreement shall be distributed to the parties in an order inverse to this in which their liabilities accrued.

Article X - LOSS TRANSFER PAYMENT AND CONSIDERATION

The Company shall pay to the Reinsurer a loss transfer payment of US \$250,000,000 within thirty business days after the execution of this Agreement. Ninety-eight percent (98%) of this sum shall be withheld and retained within an experience account

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(the "Experience Account") by the Company from which the Company shall make claim payments due from the Reinsurer hereunder.

Article XI - REPORTS AND REMITTANCES

(a) Claims and Losses

Within 90 days of the end of each year the Company shall render to the Reinsurer an annual status report of the Experience Account during the preceding year showing:

Credit Items:

- A) Credit balance forward from the previous statement
- B) Withheld premiums equal to 98% of reinsurance premiums due
- C) Interest on the positive balance within the account calculated at a rate of 3% per year on the beginning balance brought forward from the previous statement

Debit Items:

- A) Ultimate Net Loss payments made by the Company during the year.

(b) Within 90 days of the end of each year the Company shall prepare a report for the Reinsurer showing:

- A) Outstanding reserves, including Allocated Adjustment Expenses, at the beginning of the year, plus
- B) The sum of reserves, including Allocated Adjustment Expenses, increased or established during the year, minus
- C) Claims and Allocated Loss Adjustment Expenses paid during the year, equals
- D) Outstanding reserves, including Allocated Adjustment Expenses, at the end of the year.

Upon receipt of this report the Reinsurer shall authorize the Company to draw payment from the experience account for the balance due in

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respect of claims paid during the year. If the balance in the experience account is insufficient to satisfy the obligation of the Reinsurer, then the Reinsurer shall pay the amount owed in excess of the balance of the experience account within 90 days after receipt of the report. All balances shall be converted to United States Dollars at the exchange rate used in the Reinsurer's books.

(b) General

In addition to the reports required by (a) above, the Company shall furnish such other information as may be required by the Reinsurer for the completion of the Reinsurer's quarterly and annual statements and internal records.

All reports shall be rendered on forms or in format acceptable to the Company and the Reinsurer.

Article XII - ERRORS AND OMISSIONS

The Reinsurer shall not be relieved of liability because of an error or accidental omission of the Company in reporting any claim or loss or any business reinsured under this Agreement, provided that the error or omission is rectified promptly after discovery. The Reinsurer shall be obligated only for the return of the premium paid for business reported but not reinsured under this Agreement.

Article XIII - SPECIAL ACCEPTANCES

Business not within the terms of this Agreement may be submitted to the Reinsurer for special acceptance and, if accepted by the Reinsurer, shall be subject to all of the terms of this Agreement except as modified by the special acceptance.

Article XIV - RESERVES AND TAXES

The Reinsurer shall maintain the required reserves as to the Reinsurer's portion of unearned premium, if any, claims, losses, and Allocated Adjustment Expense.

The Company shall be liable for all premium taxes on premium ceded to the Reinsurer under this Agreement. If the Reinsurer is obligated to pay any premium taxes on this premium, the Company shall reimburse the Reinsurer; however, the Company shall not be required to pay taxes twice on the same premium.

Article XV - OFFSET

The Company or the Reinsurer may offset any balance, whether on account of premium, commission, claims or losses, Adjustment Expense, salvage, or otherwise, due from one

party to the other under this Agreement or under any other agreement heretofore or hereafter entered into between the Company and the Reinsurer.

Article XVI - INSPECTION OF RECORDS; CONFIDENTIALITY

A) **Inspection of records** Subject to paragraph B, Confidentiality, the Company shall allow the Reinsurer to inspect, at reasonable times, the records of the Company relevant to the business reinsured under this Agreement, including the Company's files concerning claims, losses, or legal proceedings which involve or are likely to involve the Reinsurer. The inspection may only be conducted by representatives of the Reinsurer who execute a confidentiality agreement in a form satisfactory to the Company.

B) **Confidentiality** The Reinsurer acknowledges that the Original Reinsurance Contracts and the Company's records with respect to those contracts constitute valuable privileged, commercial and confidential information not generally known about the operations or clientele of the Company ("Company confidential information"). Neither the Reinsurer nor its representatives shall, directly or indirectly, disclose, divulge or make available any Company confidential information whether acquired before or after the date of this Agreement, including but not limited to information relating to investment, financial, accounting, names and addresses of clients, carrier relationships, insurance broker/agent relationships, merchandising, marketing and selling practices, and the services, functions, systems, computer programs, procedures, or work products contemplated by, or produced by the Reinsurer or its representatives pursuant to this Agreement or which they are to use or perform in connection with the Agreement. As used in this Agreement, "Company confidential information" does not include information which (a) is or becomes generally available to the public other than as a result of a disclosure by the Reinsurer or its representatives, (b) was available to the Reinsurer on a non-confidential basis prior to its disclosure by the Reinsurer or its representatives, or (c) becomes available to the Reinsurer on a non-confidential basis from a person other than the Company or its representatives who is not otherwise bound by a confidentiality agreement with the Company or its representatives, or is not otherwise prohibited from transmitting the information to the Reinsurer.

Article XVII - ARBITRATION

All unresolved differences of opinion between the Company and the Reinsurer relating to this Agreement, including its formation and validity, shall be submitted to arbitration consisting of one arbitrator chosen by the Company, one arbitrator chosen by the Reinsurer, and a third arbitrator chosen by the first two arbitrators.

The party demanding arbitration shall communicate its demand for arbitration to the other party by registered or certified mail, identifying the nature of the dispute and the name of its

arbitrator, and the other party shall then be bound to name its arbitrator within 30 days after receipt of the demand.

Failure or refusal of the other party to so name its arbitrator shall empower the president of the Insurance Institute of Ireland to name the second arbitrator. If the first two arbitrators are unable to agree upon a third arbitrator after the second arbitrator is named, each arbitrator shall name three candidates, two of whom shall be declined by the other arbitrator, and the choice shall be made between the two remaining candidates by drawing lots. The arbitrators shall be impartial and shall be active or retired officers of property or casualty insurance or reinsurance companies.

The arbitrators shall adopt their own rules and procedures and are relieved from judicial formalities. In addition to considering the rules of equity and the customs and practices of the international insurance and reinsurance business, the arbitrators shall make their award with a view to effecting the intent of this Agreement.

The arbitration shall take place in London and English law shall apply to the conduct of the arbitration.

The decision of the majority of the arbitrators shall be in writing and shall be final and binding upon the parties.

Each party shall bear the cost of its own arbitrator and shall jointly and equally bear with the other party the expense of the third arbitrator and other costs of the arbitration. In the event both arbitrators are chosen by one party, the fees of all arbitrators shall be equally divided between the parties.

The arbitration shall be held at the times and places agreed upon by the arbitrators.

Article XVIII - INSOLVENCY OF THE COMPANY

In the event of the insolvency of the Company, the reinsurance proceeds will be paid to the Company or the liquidator, with reasonable provision for verification, on the basis of the claim allowed in the insolvency proceeding without diminution by reason of the inability of the Company to pay all or part of the claim, except as otherwise specified in the statutes of any state having jurisdiction of the insolvency proceedings or except where the Agreement, or other written agreement, specifically provides another payee of such reinsurance in the event of insolvency.

The Reinsurer shall be given written notice of the pendency of each claim against the Company on the contract(s) reinsured hereunder within a reasonable time after such claim is filed in the insolvency proceedings. The Reinsurer shall have the right to investigate each such claim and to interpose, at its own expense, in the proceeding where such claim is to be adjudicated, any defenses which it may deem available to the Company or its liquidator. 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 XIX Cancellation

This Agreement may be immediately cancelled on written notice by either party if:

- A) The performance in whole or in part of this Agreement is prohibited or rendered impossible de jure or de facto, in particular, and without prejudice to the generality of the preceding words, in consequence of any law or regulation which is or shall be in force in any country or territory, or if any law or regulation shall directly or indirectly prevent the payment of any or all of the sums due to or from either party;
- B) The other party has become insolvent or unable to pay its debts or has lost the whole or any part of its capital;
- C) There is any material change in ownership or control of the other party;
- D) The country or territory in which the other party resides or has its headquarters or is incorporated is involved in armed hostilities with any other country, whether war is declared or not, or is partly or wholly occupied by another power; or
- E) The other party fails to comply with any of the terms and conditions of this Agreement.

This Agreement may be cancelled by the Company at any time on 90 days written notice to the Reinsurer.

Written notices under this article shall be sent by Telex, facsimile or registered mail and shall be deemed received when sent or, where communications between the parties are interrupted, upon the attempt to send. All outstanding losses and other reserves, if any, for business covered by this Agreement shall be computed as of the date of cancellation upon payment to the Company of the amount equal to the credit balance of the Experience Account as of the date of cancellation. Payment and acceptance of that amount shall constitute a full and final mutual release of all liabilities of the parties under this Agreement.

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Cologne Reinsurance Company (Dublin) Ltd.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in duplicate,

this 23rd day of August, 2001,

COLOGNE REINSURANCE COMPANY (DUBLIN) LIMITED

Attest: John Byrne
John Mouldsworth
Chief Executive Officer

and this 23rd day of August, 2001.

NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH

Attest: _____

**Schedule A: To Aggregate Liability Adverse Loss
Development Agreement of Reinsurance**

Schedule of underlying reinsurance contracts

Contract	Reinsurer's Participation	Country of Origin	Reserves as at December 31 st , 2000- US \$'s -for 100%
Contract A-T3585	50.0%	USA	254,000,000
Contract B-T3607	50.0%	Germany	63,243,000
Contract C-T3739	50.0%	USA	69,323,000
Contract D-T3742	50.0%	Norway	25,734,000
Contract E-T3580	50.0%	USA	36,728,000
Contract F-T3760	42.2%	Australia	60,416,000

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