

## **CPR INTER-INSURER DISPUTE RESOLUTION COMMITMENT FOR DISPUTES RELATING TO THE SEPTEMBER 11, 2001, DISASTER**

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\_\_\_\_\_  
COMPANY

\_\_\_\_\_  
ADDRESS

\_\_\_\_\_  
CITY, STATE, ZIP

\_\_\_\_\_  
TELEPHONE/FAX

Disputes that arise between companies in the insurance industry relating to the acts of terrorism that occurred on September 11, 2001, should be resolved without the high expense, long delays, burdens, animosity and uncertainties of litigation. We therefore agree that any dispute of the nature herein described arising hereafter between our company, including its insurance subsidiaries, and another company in the insurance industry that has executed a counterpart of this Commitment, will be resolved in the manner stated below.

### **A. DISPUTES COVERED BY COMMITMENT**

The *CPR Inter-Insurer Dispute Resolution Commitment for Disputes Relating to the September 11, 2001, Disaster* (the "Commitment") applies to all disputes of any nature between or among signatory insurance companies relating to their respective obligations under policies of primary or excess insurance and arising from the acts of terrorism that occurred in New York, Pennsylvania and Virginia on September 11, 2001. However, this Commitment does not apply to any dispute that is required to be resolved under the terms of any other pre-existing agreement.

### **B. PROVISIONS OF COMMITMENT**

#### **1. Negotiation**

When a dispute covered by this Commitment has arisen between our company and one or more other signatories and is not settled promptly in the normal course of business, any party to that dispute who is a signatory to this Commitment may initiate negotiations pursuant to the procedures set forth in Section A of the *CPR Insurance Mediation Forum Procedure for Insurance Dispute Resolution* (the "Procedure"), which requires authorized representatives of the companies to confer in a good faith effort to resolve the dispute. A copy of the Procedure is attached hereto as Appendix A and incorporated by reference herein.

#### **2. Mediation**

If the parties have not resolved the dispute within 45 days of receipt of the Notice of Negotiation called for by the Procedure, the parties will attempt in good faith to resolve the dispute by mediation, in accordance with the Procedure.

#### **3. Arbitration**

If the mediation procedure has been terminated without a written resolution of the dispute, the parties may (but are not obligated to) submit the dispute to advisory or binding arbitration, as provided in Paragraph K of the Procedure.

4. **Disputes Involving Signatory and Non-Signatory Insurers**

If the dispute involves one or more insurance companies who have not signed this Commitment, such non-signatory companies will be invited to participate. If one or more of the companies who are not signatories to this Commitment are not willing to comply with this Procedure, the signatory parties nevertheless will be bound to comply with this Commitment, unless one or more of the signatory parties determines in good faith that the absent party or parties is indispensable to the resolution of the dispute.

5. **Involvement of Policyholders**

If a dispute is related to an insurance coverage claim by a policyholder, and differences exist among two or more insurance companies as to the extent of their respective obligations, the companies will seek a stay of the claim while efforts to resolve such differences are progressing, without prejudicing their position in any litigation. The policyholder may be invited to participate voluntarily in the Procedure by any participating insurance company. If such an invitation is extended and declined, the Procedure nevertheless will go forward. The preceding notwithstanding, if, in the sole judgment of any insurance company, the participation of the policyholder is necessary by virtue of self-insured retentions, matching deductibles or similar arrangements, or for any other reason, the policyholder will be notified of the Procedure and invited to participate. If said policyholder objects to the conduct of the Procedure, with or without its participation, the Procedure will go forward unless one of the insurance companies objects. In any event, any agreement reached between insurance companies, as to which the policyholder's approval is required, shall not bind the policyholder without such approval.

6. **No Modification of Contract**

Nothing in this Commitment is intended to modify the terms of any contract of insurance. The above procedures notwithstanding, if a dispute arises out of or relates to a contract between two or more signatories which contains dispute resolution provisions in conflict with those set forth above, the contractual provisions will govern, unless the parties otherwise agree.

**C. COMMUNICATION AND IMPLEMENTATION**

The Chief Claims Officer of each signatory will ensure (a) that copies of this Commitment and the related Procedure are effectively communicated periodically to all appropriate persons employed by the signatory or its subsidiaries; and (b) that a senior claims executive of such signatory serves as "ADR Executive," with responsibility for ensuring the signatory's compliance with this Commitment.

**D. DURATION AND WITHDRAWAL**

This Commitment is entered into in consideration of other insurance companies' executing counterparts hereof. Each signatory may terminate its Commitment on 90 days' written notice to CPR, provided that the signatory's obligation to participate in the procedures specified herein commenced before the effective date of such termination shall not be affected thereby.

**E. NO RIGHTS IN THIRD PARTIES**

This Commitment is intended to control solely the rights of the signatory insurance companies and shall create no rights in third parties.

**F. CHOICE OF LAW**

This Commitment shall be controlled and interpreted in accordance with the law of the State of New York.

**G. CONFIDENTIALITY**

All processes contemplated by this Commitment will be conducted with complete confidentiality. The entire procedure shall be treated as an offer to compromise under the Federal Rules of Evidence and state rules of evidence and therefore inadmissible in any subsequent court or administrative proceeding.

**H. NO PREJUDICE OR WAIVER OF RIGHTS**

Nothing in this Commitment is intended to reflect on the merits of any signatory's coverage position on any issue. By participating in the procedures specified herein, no party waives or otherwise prejudices any right or position it may otherwise have.

\_\_\_\_\_  
Chief Claims Officer

Date \_\_\_\_\_

Our major insurance subsidiaries or affiliates are:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Note:** Please send a signed copy of your statement to the International Institute for Conflict Prevention & Resolution, 30 East 33rd Street, 6th Floor, New York, NY 10016. CPR will publish a registry of companies subscribing to the statement and of each company's ADR Executive.

## Appendix A

### CPR INSURANCE DISPUTE RESOLUTION PROCEDURE

#### INTRODUCTION

Numerous insurance companies have subscribed, or will hereafter subscribe, to the *CPR Inter-Insurer Dispute Resolution Commitment for Disputes Relating to the September 11, 2001, Disaster* (the "Commitment"). Signatories agree that they will attempt in good faith to resolve disputes described in Section A of the Commitment with other signatories through unassisted negotiations between authorized representatives and, if such negotiations are unsuccessful, through mediation and arbitration in accordance with this Procedure. This Procedure also will apply to non-signatory policyholders and insurance companies who voluntarily agree to participate.

#### A. CONFIDENTIALITY

The entire process is confidential. Unless otherwise agreed to in writing, CPR, the parties, the mediator, the arbitrator(s), and their respective employees, representatives and agents shall not disclose information regarding the process, the information disclosed by the other party except to fulfill legal or contractual reporting requirements to regulators, auditors or reinsurers. The entire procedure shall be treated as an offer to compromise under the Federal Rules of Evidence and state rules of evidence and therefore inadmissible in any subsequent court or administrative proceeding.

#### B. INITIATING NEGOTIATIONS

If a dispute covered by the Commitment arises between two or more Commitment signatories, any signatory party to the dispute may give a Notice of Negotiation substantially in the form annexed hereto. Such notice shall describe the nature of the dispute sufficient to identify it and shall list the name, address and telephone number of the claims executive of the initiating company to whom inquiries or responses should be addressed. A Notice of Negotiation shall be given to all other Commitment signatory parties who are involved in the dispute. A copy of the Notice shall be sent to CPR. An insurance company who has agreed to participate in the Procedure with respect to the dispute may send the Notice to other interested parties, including any policyholder involved in the matter and excess insurance companies likely to become involved in the dispute, but who have not signed the Commitment. Any such interested party may participate in the proceedings provided it agrees to be bound by the Procedure with respect to the dispute.

Representatives of the parties authorized to settle the dispute will meet at a mutually acceptable time and place, within 15 days after receipt of the Notice of Negotiation, and thereafter as often as they deem necessary; will exchange relevant information; and will diligently attempt to resolve the dispute.

#### C. INITIATING MEDIATION

If a dispute has not been resolved pursuant to Section B hereof within 45 days from receipt of the Notice of Negotiation, any party to the dispute may give a Notice of Mediation substantially in the form annexed hereto to all other parties and to CPR. Upon receipt of such Notice, any insurance company that is a party to the dispute and a Commitment

signatory will be obligated to participate in the mediation in good faith, and will sign and return copies of the Notice to the initiating party and CPR within ten days of its receipt.

#### **D. SELECTING THE MEDIATOR**

Promptly following receipt of a Notice of Mediation, CPR will convene the parties participating in the mediation, in person or by telephone, to attempt to select a mediator by agreement of the parties. If the parties do not promptly reach agreement, CPR will submit to the parties the names of not less than five mediator candidates, with their resumes and hourly rates. If the parties are unable to agree on a candidate from the list within seven days following receipt of the list, each party will, within 15 days following receipt of the list, send to CPR the list of candidates ranked from 1 to 5 in descending order of preference. The candidate with the lowest combined score will be appointed as the mediator by CPR. CPR will break a tie.

Before proposing any mediator candidate CPR will request the candidate to disclose any circumstances known to him or her which would cause reasonable doubt regarding the candidate's impartiality. If such circumstances are disclosed, the individual will not serve, unless all parties agree. A party may challenge a mediator candidate if it knows of circumstances giving rise to reasonable doubt regarding the candidate's impartiality.

The procedure set forth in this Section D notwithstanding, the parties are free to select a mediator by themselves or by other means, provided all parties to the dispute agree to do so and they promptly notify CPR of their intention.

#### **E. MEDIATOR EXPENSE**

The mediator's compensation rate will be determined before appointment. Each party will pay an equal share of the compensation and any other costs of the process, including CPR's administrative fee.

#### **F. GROUND RULES**

The ground rules of the mediation will be:

1. The process will be nonbinding, except to the extent that the parties reach a mutually binding agreement in settlement of the dispute.
2. The mediator will be neutral, disinterested and impartial.
3. The parties will cooperate fully with the mediator.
4. The mediator will control the procedural aspects of the mediation:
  - (a) The mediator may meet and communicate separately with each party.
  - (b) The mediator normally will hold an initial joint meeting with the parties and then decide when to hold joint and/or separate meetings. The mediator will fix the time, place and agenda for each session. There will be no record of any meeting. Formal rules of evidence will not apply.
5. Each party will have at least one representative active in the mediation who is authorized to commit to a resolution of the dispute.

6. The process will be conducted expeditiously. Each representative will make every effort to be available for meetings.
7. The mediator will not transmit information received from any party to another party or any third party unless authorized to do so by the party transmitting the information.
8. The mediator will be disqualified as a witness, consultant or expert in any pending or future investigation, action or proceeding relating to the subject matter of the mediation.
9. The mediator may obtain assistance and independent expert advice, subject to the agreement, and at the expense, of the parties.
10. Unless the parties agree otherwise, the mediation will be deemed terminated without any agreed upon resolution if:
  - (a) After 90 days from the date of selection of the mediator a written resolution has not been agreed upon by the parties and a party has given written notice to the mediator and the other parties of its intention to withdraw, or
  - (b) The mediator concludes that further efforts would not be useful.
11. Neither CPR nor the mediator will be liable for any act or omission in connection with the mediation.

## **G. PRESENTATION TO THE MEDIATOR**

Upon entering into mediation, and at least seven days before the first mediation conference, each party will deliver to the mediator a statement summarizing the dispute's background and such other information it deems necessary to familiarize the mediator with the dispute. The parties will submit jointly any materials they agree upon. The mediator may request each party to provide clarification and additional information, and to present its case informally to the mediator at the initial joint meeting or at later separate meetings.

The parties are encouraged, but not required, to exchange all information submitted to the mediator in order to further each party's understanding of the other's viewpoint. Except as the parties otherwise agree, the mediator will keep confidential any information submitted. At the conclusion of the mediation, the mediator will return to each party all written materials which that party provided to the mediator without retaining copies. All material exchanged by the parties will be returned to the originating party without retaining copies.

## **H. EXCHANGE OF INFORMATION**

If a party has a substantial need for documents or other material in the possession of other party, the parties will attempt to agree on the exchange of requested documents or other material. Should they fail to agree, any party may request a joint meeting with the mediator to assist the parties in reaching agreement. At the conclusion of the mediation process, each recipient of documents will return them to the originating party without retaining copies.

## **I. NEGOTIATION OF TERMS**

The mediator may promote a resolution in any manner the mediator believes is appropriate. The parties are expected to initiate proposals for resolution that reflect each other's perceived legitimate interests.

## **J. RESOLUTION**

If a resolution is reached, the mediator, or a representative of a party, will draft a written settlement agreement incorporating all terms. This draft will be circulated among the parties, amended as necessary and formally executed. Under certain circumstances a resolution may have to be tentative or contingent on the consent or action of other parties.

## **K. ARBITRATION**

If the mediation procedure has been terminated without a written resolution of the dispute, the parties will so advise CPR. If all parties agree, CPR will promptly commence a proceeding for arbitration of the dispute. The parties will determine in each case whether the arbitration will be binding. Except as may be otherwise agreed by the parties, all arbitrations conducted pursuant to this Procedure will be conducted pursuant to the CPR Rules for Non-Administered Arbitration.

**CPR Insurance Mediation Forum  
NOTICE OF NEGOTIATION OR MEDIATION**

**DATED:** \_\_\_\_\_

**TO:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
ADR Executive(s) of Responding Compan(y)(ies)

This is to advise you that in accordance with the ***CPR Inter-Insurer Dispute Resolution Commitment for Disputes Relating to the September 11, 2001, Disaster***, we (the Initiating Company) wish to commence the process checked below (negotiation or mediation) of the dispute described on the annexed Dispute Notice.

**NEGOTIATION.** We wish to commence negotiation of the dispute described on the annexed Dispute Notice. Representatives of the parties with settlement authority are required to meet at a mutually acceptable time and place, within 15 days after receipt of this Notice, and diligently attempt to resolve the dispute. Kindly contact the individual identified in Paragraph IV to arrange a time and place to exchange information and attempt to resolve this dispute.

**MEDIATION.** We wish to commence mediation of the dispute described on the annexed Dispute Notice. Mediation is timely either because 45 days have elapsed since receipt of the Notice of Negotiation without resolution of the dispute or because all parties have agreed that further negotiation would be unproductive. The parties are obligated to participate in the mediation in good faith.

**NOTICE TO CPR AND RESPONDING PARTIES**

A copy of this notice shall be sent by the Initiating Company to the Responding Company and to the CPR Panel Management Group, 30 East 33rd Street, 6th Floor, New York, NY 10016, FAX (212) 949-8859.

**CPR Insurance Mediation Forum  
DISPUTE NOTICE**

**PART A: STATEMENT**

**TO BE COMPLETED (TO EXTENT KNOWN) BY INITIATING COMPANY**

**I. CLAIM INFORMATION KNOWN ABOUT RESPONDING COMPANY:**

RESPONDING COMPANY NAME: \_\_\_\_\_

NAME OF POLICYHOLDER: \_\_\_\_\_

RESPONDING COMPANY'S CLAIM NUMBER(S) (if known):  
\_\_\_\_\_

RESPONDING COMPANY'S POLICY NUMBER(S) and PERIOD(S) and TYPE OF  
COVERAGE (if known): \_\_\_\_\_

CAPTION OF UNDERLYING ACTION (if any):  
\_\_\_\_\_  
\_\_\_\_\_

CAPTION OF COVERAGE ACTION (if any):  
\_\_\_\_\_  
\_\_\_\_\_

RESPONDING COMPANY'S CLAIMS REPRESENTATIVE (if known):

NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

TELEPHONE NO: \_\_\_\_\_

FAX NO: \_\_\_\_\_

**II. STATEMENT OF MATTER IN DISPUTE:**

**NOTE:** If the dispute involves the Initiating Company and more than one Responding Company, please provide the information requested in Paragraph I for each Responding Company in the dispute.

**III. DOLLAR AMOUNT IN DISPUTE:**

**IV. CLAIM INFORMATION OF INITIATING COMPANY:**

INITIATING COMPANY NAME: \_\_\_\_\_

NAME OF POLICYHOLDER: \_\_\_\_\_

INITIATING COMPANY'S CLAIM NUMBER(S):

\_\_\_\_\_

INITIATING COMPANY'S POLICY NUMBER (S) and PERIOD(S) and TYPE OF  
COVERAGE (if known): \_\_\_\_\_

CAPTION OF UNDERLYING ACTION (if any):

\_\_\_\_\_

\_\_\_\_\_

CAPTION OF COVERAGE ACTION (if any):

\_\_\_\_\_

\_\_\_\_\_

INITIATING COMPANY'S CLAIMS REPRESENTATIVE:

NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

TELEPHONE NO: \_\_\_\_\_

FAX NO: \_\_\_\_\_

Initiating Company

\_\_\_\_\_

(Signature)

\_\_\_\_\_

(Name)

\_\_\_\_\_

(Title)

**PART B: COUNTERSTATEMENT\***

**TO BE COMPLETED BY THE RESPONDING PARTY**

**I. CLAIM INFORMATION FROM RESPONDING PARTY:**

The claim information provided by the Initiating Company about the Responding Company is corrected or supplemented as follows:

**II. COUNTERSTATEMENT OF MATTER AND DOLLAR AMOUNT IN DISPUTE:**

**SIGNATURE AND STATEMENT OF RESPONDING PARTY**

The undersigned Responding Company either is a signatory of the ***CPR Inter-Insurer Dispute Resolution Commitment for Disputes Relating to the September 11, 2001, Disaster*** and will participate in mediation of the above dispute in accordance with such Commitment and the Procedure attached thereto as Appendix B, or is not a signatory of such Commitment but voluntarily agrees to participate in mediation of the above dispute in accordance with the terms of such Commitment and Procedure.

\_\_\_\_\_

Responding Company

By: \_\_\_\_\_

(Signature)

\_\_\_\_\_

(Name)

\_\_\_\_\_

(Title)

\* If your information is more complete or different than the information supplied by the Initiating Company, and/or if you disagree with the statement of the matter in dispute as stated in Part A, please complete I or II as appropriate and return within ten days to both the Initiating Company and the CPR Panel Management Group, 30 East 33rd Street, 6th Floor, New York, NY 10016, FAX (212) 949-8859.