

CPR INTERNATIONAL REINSURANCE INDUSTRY DISPUTE RESOLUTION PROTOCOL

The companies subscribing to this Protocol wish to avoid unnecessary delays, financial burdens, animosity and uncertainties of arbitration and litigation in connection with disputes between reinsurers and ceding companies. The subscribing companies believe that such disputes are best resolved promptly, privately and efficiently through confidential negotiation and, if necessary, mediation.

The companies subscribing to this Protocol therefore undertake to attempt in good faith to resolve any dispute of the nature herein described arising between each such company (including its insurance and reinsurance affiliates and subsidiaries) and any other subscribing company in the manner set forth. (Terms appearing in *bold italics* are defined in Appendix A.)

A. Disputes Covered by the Protocol

The CPR International Reinsurance Industry Dispute Resolution Protocol (the "Protocol") applies to any *Reinsurance Dispute* between or among *Insurers* who are parties to a treaty, contract or other *Agreement of Reinsurance*.

Any disagreement regarding the applicability of this Protocol or whether a particular dispute falls within this Section A shall be referred to the International Institute for Conflict Prevention & Resolution ("CPR"), whose decision on that issue shall final and binding on the parties to the dispute in question.

B. Provisions of Protocol

1. Negotiation

When a Reinsurance Dispute covered by this Protocol has arisen between two or more subscribers hereto, and is not settled promptly in the normal course of business, any subscriber party may initiate this Protocol by serving upon all other parties to the dispute, and to CPR, a Notice of Negotiation substantially in the form set forth as Exhibit I to the *CPR International Reinsurance Mediation Procedure* (the "Procedure"), attached hereto as Appendix B, accompanied by the information and documents set forth in Section B(3) of the Procedure and also in that Notice.

Within 30 days of the delivery thereof, all noticed parties shall submit a Notice of Response substantially in the form set forth as Exhibit II to the Procedure, accompanied by the information and documents set forth in the Notice of Negotiation.

No later than the earlier of (a) 45 days from delivery of the Notice of Negotiation or (b) 15 days from delivery of the last-delivered Notice of Response, the representatives of all parties who were designated in the respective notices shall meet at a mutually acceptable place, and

thereafter as they reasonably deem necessary, to attempt to resolve the dispute. During this time all reasonable requests for further information regarding the dispute shall be promptly honored.

2. Mediation

In the absence of an agreement to the contrary, if the parties have not resolved the dispute by 14 days from the commencement of the first negotiation session convened pursuant to Section B.1., above, then the parties will attempt to resolve the dispute by mediation, in accordance with the Procedure.

3. Disputes Involving Signatory and Non-Signatory Insurers

If the dispute involves one or more Insurers who are not subscribers to this Protocol, then all such non-subscribing Insurers will be invited to participate. If one or more of the parties who are not subscribers are not willing to engage in mediation pursuant to this Protocol, the subscribing parties nevertheless will attempt to mediate, unless the absent party or parties is indispensable to the dispute.

4. Commencing Arbitration or Litigation

The purpose of this Protocol is to try to avoid the necessity to engage in adjudicatory processes such as arbitration or litigation with respect to the disputes that are the subject of the Protocol. Nevertheless, and any other provision hereof notwithstanding, it is recognised that any party to any dispute may wish to commence any arbitration, litigation, administrative proceeding, or any other kind of legal action in order to preserve rights under statutes of limitation or repose; to claim venue; to seek provisional relief; to avoid irreparable injury; to preserve the status quo; or for any other reason; and may take whatever action that the party in its sole judgment deems necessary to defend any lawsuit or other proceeding to which it is or may be made a party. Despite such action, subscribing Insurers will continue to participate in good faith in the procedures specified in this Protocol.

5. No Prejudice or Waiver of Rights

Nothing in this Protocol, or in the incorporated Procedure, is intended to reflect on the merits of any Insurer's coverage position on any issue. By participating in the procedures specified herein, no party waives or otherwise prejudices any right, defense, argument or position it has taken or may take with respect to any aspect of any dispute, including a reservation of rights with respect to the existence of coverage.

C. Communication and Implementation

The [**Chief Claims Officer can we identify an individual with reference to a register of CPR representatives in each member – it might not always be the CCO**] of each subscribing Insurer will ensure (a) that copies of this Protocol and the related Procedure are communicated periodically to all appropriate persons charged with effectuating its purposes; and (b) that a senior claims executive of each subscribing Insurer shall be designated as "ADR Executive," with responsibility for ensuring compliance with this Protocol and the person of first resort for communications with other subscribing Insurers.

D. Contractual Dispute Resolution Provisions

The procedures contemplated herein notwithstanding, if a dispute arises out of or relates to an Agreement of Reinsurance containing dispute provisions that are inconsistent with this Protocol, then the contractual provisions shall govern unless all affected parties otherwise agree. The existence of an arbitration clause shall not, in and of itself, constitute an inconsistency for the purposes of this Section D.

E. Duration and Withdrawal

This Protocol shall become effective 30 days after CPR notifies the subscribers that ten (10) Insurers have subscribed hereto, and shall remain effective so long as at least ten (10) Insurers remain subscribers. Any subscriber may terminate its participation on 30 days' written notice to CPR, provided that the subscriber's obligation to participate in the procedures specified herein with respect to disputes as to which those procedures commenced before the effective date of termination shall not be affected thereby.

F. No Rights in Third Parties

This Protocol is intended to address solely the expectations and intentions of the subscribers hereto and shall create no rights in third parties. Subscription to this Protocol does not create any independent cause of action against any subscriber, and the failure of a subscribing Insurer to conform to the Protocol does not constitute a breach of a promise for which the law may provide relief.

Chief Claims Officer

Date

Company

Address

City, State, Zip

Telephone/Fax

E-Mail

Our major insurance subsidiaries or affiliates on whose behalf this Protocol is subscribed are:

Appendix A

Definitions

As used in this Protocol, the terms set forth below shall have the meanings:

"Agreement of Reinsurance" shall include, without limitation, any treaty, facultative instrument, contract, or other written agreement of any type, pursuant to which an Insurer is insured against loss or liability by reason of an underlying contract of insurance issued to a third party. It shall include without limitation any agreement binding one party (the Reinsurer) to pay to another party (the Reinsured) all or any part of the loss sustained in respect to the subject of an underlying agreement of insurance assumed by the Reinsured in a policy issued by it to a third party.

"Reinsurance Dispute" shall mean any dispute relating to or involving the nature or interpretation of any Agreement of Reinsurance, or the relative duties and responsibilities with respect to such Agreement.

"Insurer" shall include primary and excess insurers as well as reinsurers.

Appendix B

CPR International Reinsurance Mediation Procedure

Introduction

Certain Insurers have subscribed, or will hereafter subscribe, to the *CPR International Reinsurance Industry Dispute Resolution Protocol* (the "Protocol"). Subscribers undertake that they will attempt in good faith to resolve disputes of a nature specified in Section A of the Protocol with other subscribers, through a graduated process of exchange of information, unfacilitated negotiations between authorized representatives, and mediation in accordance with the Procedures set forth below. These Procedures also will apply to mediation of disputes involving non-subscribing Insurers who agree to participate, and to disputes with respect to which parties voluntarily agree to submit to mediation pursuant to these Procedures.

A. Confidentiality

The entire process is confidential. Unless otherwise agreed to in writing, the parties, the mediator, the International Institute for Conflict Prevention and Resolution ("CPR"), and their respective employees, representatives and agents shall not disclose information regarding the mediation process, information disclosed by the other party or the mediator, any mediator evaluation or proposal (as described in Section I) or the terms of any eventual or proposed resolution, except to fulfil legal or contractual reporting requirements to regulators, auditors or reinsurers. The entire procedure shall be treated as an offer to compromise under any applicable codes or rules of procedure or of evidence, and the parties expressly stipulate that such information shall be inadmissible in any subsequent judicial or administrative proceeding unless offered on an independent ground.

B. Initiating Negotiations

1. Notice of Negotiation: If a dispute specified in Section A of the Protocol shall arise between two or more Protocol subscribers, any subscribing party to the dispute may serve a Notice of Negotiation substantially in the form annexed hereto as Exhibit I. The Notice shall describe the nature of the dispute in sufficient detail to enable the recipient to identify it, and shall list the name and contact information of the claims executive of the initiating company to whom inquiries or responses are to be addressed. A Notice of Negotiation shall be given to all other parties involved in the dispute, and to CPR.
2. Notice of Response: Within 30 calendar days of delivery of the Notice of Negotiation with accompanying information and documents, noticed parties shall submit a Notice of Response substantially in the form annexed hereto as Exhibit II. Parties who are subscribers to the Protocol are required to respond and parties who are not subscribers are encouraged to respond.

3. Initial Exchange of Information: Promptly upon exchange of Notices, the parties shall meet in good faith and agree upon what information and documents shall be made available for copying and inspection. The parties shall make available all information that is (a) in control of the parties and their agents, (b) not privileged, and (c) relevant to the dispute, with the aim that such disclosure be reasonably calculated to permit an informed assessment of the basis for the claims and defences in dispute. By way of illustration, but without limitation, the following documents are presumptively accessible, non-privileged and relevant, and should be made available:
 - a. All underwriting files relating to the underlying claim, including those relating to the direct policy giving rise to the loss.
 - b. All underwriting files relating to the Agreement of Reinsurance pursuant to which the claim is being made by the ceding Insurer.
 - c. All claims files of the ceding Insurer that relate to the underlying claim.
 - d. All documents that would be relied upon by any reinsurer to support its denial of coverage in whole or in part.
 - e. All documents, including policies of insurance that may inure to the benefit of any reinsurer who is a party to the dispute.

Upon the conclusion of all proceedings contemplated by these Procedures, each recipient of any document shall return every document to the originating party, without retaining copies.

4. Commencement of Negotiation: No later than the earlier of (a) 45 calendar days from delivery of the Notice of Negotiation or (b) 15 calendar days from the last-delivered Notice of Response, the representatives of all parties who were designated in the respective Notices shall meet at a mutually acceptable time and place, and thereafter as they deem necessary, to attempt to resolve the dispute. During this time all reasonable requests for further information regarding the dispute shall be promptly honored.

C. Initiating Mediation

In the absence of any agreement to the contrary, if the parties have not resolved all aspects of the dispute pursuant to Section B by 14 calendar days from commencement of the first negotiation session convened pursuant to paragraph 1 of Section B, then the parties shall, in the absence of good reason not to do so, engage in mediation to resolve any remaining disagreements. Any party that is a subscriber to the Protocol shall be obligated to participate in the mediation in good faith or to provide good reason for not doing so. If one or more parties to the dispute are not a subscriber to the Protocol, then the subscribing parties shall nevertheless consider in good faith engaging in mediation, unless the absent party is indispensable to resolution of the dispute as to the subscribing parties.

D. Selecting the Mediator

Promptly upon the acknowledgment of an intention to mediate, the parties shall seek in good faith to agree upon a mediator. If the parties do not promptly reach agreement, they shall contact CPR which, for a reasonable and customary fee, shall confer with the parties and, within 14 calendar days of such conference, shall submit to the parties the names of not fewer than five mediator candidates, with information concerning their professional background, availability and willingness to serve, hourly rates, and any other information or criteria requested by the parties to the particular dispute. The parties shall confer with respect to the list. If, after 7 calendar days of submission of the list by CPR, the parties are unable to agree on a candidate, then on the next business day each party shall submit to CPR the list of candidates ranked from 1 to 5 in descending preference. The candidate with the lowest combined score will be appointed as the mediator by CPR. CPR will break any tie.

Before proposing any mediator candidate, CPR will request that the candidate disclose any circumstances known to the candidate that would cause reasonable doubt regarding the candidate's neutrality, independence or impartiality.¹ 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 that candidate's neutrality, independence or impartiality. However, any such challenge that is not asserted promptly upon learning of the basis for the challenge shall be waived.

The procedure set forth in this Section D notwithstanding, the parties are free to select a mediator by any 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 shall execute a retention agreement directly with the mediator and, in the absence of an agreement to the contrary, will pay an equal share of the compensation and any other costs of the mediation, including the administrative fee due to CPR for its services (if any) in the mediator selection process.

F. Ground Rules

The ground rules of the mediation will be:

1. The process is non-binding.

¹**Neutrality** refers to the objective condition of the mediator, who should have no direct interest in the outcome of the dispute. **Independence** refers to the absence of any personal or business relationship between the mediator and any one of the parties. **Impartiality** refers to the subjective attitude or predisposition of the mediator, who should not favour the interests of one party over the interests of any other party.

2. The mediator will be neutral, independent 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 subsequent joint or separate meetings. In consultation with the parties, 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. At least one representative of each party, with full authority to negotiate and approve a final and complete resolution of every aspect of the dispute, will attend each session.
6. The process will be conducted expeditiously. Each representative will make every reasonable effort to be available for meetings.
7. The mediator will not transmit information received from any party or any third party to anyone unless expressly authorized to do so by the party transmitting the information.
8. The mediator will be disqualified as a representative, 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 procedure will be deemed terminated without any agreed-upon resolution if:
 - a. (i) Ninety days have expired from the date of selection of the mediator, *and* (ii) a written resolution has not been agreed upon by the parties, *and* (iii) a party has given written notice to the mediator and the other parties of its intention to withdraw.
 - b. The mediator concludes that further efforts would not be useful.
11. Neither CPR nor the mediator shall be liable for any act or omission in connection with the mediation.

G. Presentation to the Mediator

At least seven days before the first mediation conference, each party will deliver to the mediator the Notices of Negotiation and Response that summarize the factual and legal background of the dispute, supplemented to the degree the submitting party may consider appropriate, and accompanied by such documents and other information that the submitting party deems necessary to familiarize the mediator with the dispute. The parties will confer in order to make joint submissions where helpful and efficient. The mediator may request any party to provide clarification and additional information as may be helpful for the mediator to understand the basis of each party's assertions and proposals for resolution. The parties are encouraged, but not required, to exchange all information submitted to the mediator in order to facilitate each party's understanding of the basis of other parties' assertions and proposals. Except as the parties may agree, the mediator shall keep confidential any information submitted. At the conclusion of the mediation, the mediator will return to each party all written materials that the party provided to the mediator, without retaining copies.

H. Exchange of Further Information

If a party has a substantial need for further documents or other material in the possession of another 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 on the question. The mediator shall not have any power of compulsion, in the absence of a stipulation by the parties to that effect.

I. Negotiation of Terms

The mediator may promote a resolution in any manner that the mediator believes is appropriate. The parties are expected to initiate proposals for resolution at all times and at every stage in the process.

If the mediator concludes that mediation techniques have been exhausted and the parties have not reached agreement, the mediator, with the consent of all parties, may proffer an evaluation (which, if the parties so choose, may be written) of either (i) the mediator's view of the likely outcome of the dispute if it were brought to final award before an arbitrator or final judgment before a court, or (ii) the mediator's final proposal for a settlement on terms that the mediator considers fair and equitable in light of the interests of all parties. Thereupon, the mediator will be available for another mediation conference, to investigate whether the mediator's evaluation or proposal may lead to resolution.

J. Resolution

If a resolution is reached, either the mediator or a representative of a party will draft a term sheet incorporating all terms. This term sheet will be circulated to all parties, amended as necessary and initialed by representatives of all parties prior to the adjournment of the final mediation conference. A formal agreement will be subsequently executed.

Exhibit I

Notice of Negotiation

Dated: _____

From: _____

ADR Executive of Initiating Company

To: _____

ADR Executive of Responding Company

This Notice advises you that, in accordance with the *CPR International Reinsurance Industry Dispute Resolution Protocol*, we (the Initiating Company) wish to avail ourselves of the procedures contemplated by the Protocol with respect to the dispute described below.

Pursuant to the Protocol, within 30 calendar days of delivery of this Notice, you shall submit a Notice of Response substantially in the form annexed hereto. Parties who are subscribers to the Protocol are required to respond and parties who are not subscribers are encouraged to respond.

Further pursuant to the Protocol, promptly upon exchange of Notices, we agree to meet with you good faith and agree upon what information and documents shall be made available for copying and inspection. We shall make available all information that is (a) in our or our agents' control, (b) not privileged, and (c) relevant to the dispute, with the aim that such disclosure be reasonably calculated to permit an informed assessment of the basis for the claims and defences in dispute. We anticipate that you will make a similar production. By way of illustration, but without limitation, the following documents are presumptively accessible, non-privileged and relevant, and should be made available:

- a. All underwriting files relating to the underlying claim, including those relating to the direct policy giving rise to the loss.
- b. All underwriting files relating to the Agreement of Reinsurance pursuant to which the claim is being made by the ceding Insurer.
- c. All claims files of the ceding Insurer that relate to the underlying claim.
- d. All documents that would be relied upon by any reinsurer to support its denial of coverage in whole or in part.

- e. All documents, including policies of insurance, which may inure to the benefit of any reinsurer who is a party to the dispute.

Upon the conclusion of all proceedings contemplated by these Procedures, each recipient of any document shall return every document to the originating party, without retaining copies.

A copy of this Notice is being sent by the Initiating Company to all of the Responding Companies and to the International Institute for Conflict Prevention & Resolution, 30 East 33rd Street, 6th Floor, NY 10016, USA, FAX (212) 949-8859.

I. Claim information known about responding parties:

Responding Company Name: _____

Name of Policyholder: _____

Claim Number(s) (if known): _____

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: _____

Fax: _____

E-Mail: _____

II. Statement of Matter in the Dispute:

III. Monetary Amount in Dispute:

IV. Claim Information of Initiating Company:

Initiating Company Name: _____

Name of Policyholder: _____

Policy Number(s) and Period(s) and Type of Coverage (if known):

Caption of Underlying Action (if any): _____

Caption of Coverage Action (if any): _____

Claim Number(s) of Initiating Party: _____

Name: _____

Address: _____

Telephone: _____

Fax: _____

E-Mail: _____

For the Initiating Company _____

(Signature)

(Name)

(Title)

Notice of Response

To be Completed by each Responding Party

I. Claim Information from Responding Company:

The claim information provided by the Initiating Company about the Responding Company is hereby 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 (a) is a subscriber to the *CPR International Reinsurance Industry Dispute Resolution Protocol*, and will participate in the dispute resolution processes contemplated by the Protocol in that capacity, or (b) is not a subscriber to the Protocol but voluntarily agrees to participate in accordance with its terms. The parties will promptly meet to discuss exchange of information and documents pursuant to the Protocol, with the express understanding that, upon conclusion of all proceedings contemplated by the Protocol, each recipient of any document shall return every document to the originating party, without retaining copies.

Responding Company
By: _____
(Signature)

(Name)

(Title)

Please complete and return within ten days to both the Initiating Company and the International Institute for Conflict Prevention & Resolution, 30 East 33rd Street, 6th Floor, NY 10016, USA FAX (212) 949-8859.