

ARKANSAS REGISTER

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Rule 65

SHARON PRIEST
SECRETARY OF STATE
STATE OF ARKANSAS



~~W. J. "Bill" McCuen~~ Sharon Priest
Secretary of State
State Capitol Rm. 010
Little Rock, Arkansas 72201-1094

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Name of Agency Arkansas Insurance Department

Department Legal

Contact Person Bruce Heffner

Statutory Authority for Promulgating Rules 23-62-308, 23-61-108, 25-15-201

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CERTIFICATION OF AUTHORIZED OFFICER

I Hereby Certify That The Attached Rules Were Adopted
In Compliance with Act 434 of 1967 As Amended.

Jean Langford

Signature

Chief Counsel

Title

2/2/96

Date

RULE AND REGULATION 65
CREDIT FOR REINSURANCE

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STATE OF ARKANSAS

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22 SECTION 1. Authority

- 23 This regulation is promulgated pursuant to the authority granted to the
24 Arkansas Insurance Commissioner ("Commissioner") by §23-62-308 and
25 §23-61-108 of the Insurance Code; and the Administrative Procedure Act,
26 Ark. Code Ann. §§25-15-201, et seq., and Section 7 of Act 1272 of 1995.

27 SECTION 2. Purpose

- 28 The purpose of this regulation is to set forth rules and procedural
29 requirements which the Commissioner deems necessary to carry out the
30 provisions of the Arkansas Law on Credit for Reinsurance, Ark. Code
31 Ann. §§23-62-201, et seq. and §§23-62-301, et seq. of the Insurance
32 Code. The actions and information required by this regulation are
33 hereby declared to be necessary and appropriate in the public interest
34 and for the protection of the ceding insurers in this state.

35 SECTION 3. Severability

- 36 If any provisions of this regulation, or their application to any
37 person or circumstance, is held invalid, such determination shall not
38 affect other provisions or applications of this regulation which can be
39 given effect without the invalid provision or application, and to that
40 end the provisions of this regulation are separable.

41 SECTION 4. Credit for Reinsurance - Reinsurer Licensed in this State

- 42 Pursuant to Ark. Code Ann. §23-62-305(b), the Commissioner shall allow
43 credit for reinsurance ceded by a domestic insurer to assuming insurers

1 which were licensed in this state as of the date of the ceding
2 insurer's statutory financial statement.

3 SECTION 5. Credit for Reinsurance - Accredited Reinsurers

4 A. Pursuant to Ark. Code Ann. §23-62-305(c), the Commissioner
5 shall allow credit for reinsurance ceded by a domestic insurer to an
6 assuming insurer which is accredited as a reinsurer in this state as of
7 the date of the ceding insurer's statutory financial statement. An
8 accredited reinsurer is one which:

9 (1) Files a properly executed Form AR-1 or its successor,
10 attached as exhibit "A" to this regulation, as evidence of its
11 submission to this state's jurisdiction and to this state's authority
12 to examine its books and records; and

13 (2) Files with the Commissioner a certified copy of a letter or
14 a certificate of authority or of compliance as evidence that it is
15 licensed to transact insurance or reinsurance in at least one state, as
16 defined in Ark. Code Ann. §23-60-102(10) as amended by Act 1272 of
17 1995, or, in the case of a United States branch of an alien assuming
18 insurer, is entered through and licensed to transact insurance or
19 reinsurance in at least one state, as defined in Ark. Code Ann.
20 §23-60-102(10) as amended by Act 1272 of 1995; and

21 (3) Files annually with the Commissioner a copy of its annual
22 statement filed with the insurance department of its state of domicile
23 or, in the case of an alien assuming insurer, with the state through
24 which it is entered and in which it is licensed to transact insurance
25 or reinsurance, and a copy of its most recent audited financial
26 statement; and

27 (4) Maintains a surplus as regards policyholders in an amount
28 not less than \$20,000,000 and whose accreditation has not been denied
29 by the Commissioner within ninety (90) days of its submission or, in
30 the case of companies with a surplus as regards policyholders of less
31 than \$20,000,000, whose accreditation has been approved by the
32 Commissioner.

33 B. If the Commissioner determines that the assuming insurer has
34 failed to meet or maintain any of these qualifications, he may upon
35 written notice and hearing revoke the accreditation. No credit shall
36 be allowed a domestic ceding insurer with respect to reinsurance ceded
37 after March 30, 1992 if the assuming insurer's accreditation has been
38 denied by the Commissioner or revoked by the Commissioner after notice
39 and hearing.

40 SECTION 6. Credit for Reinsurance - Reinsurer Domiciled and Licensed in
41 Another State

42 A. Pursuant to Ark. Code Ann. §23-62-305(e), the Commissioner
43 shall allow credit for reinsurance ceded by a domestic insurer to an
44 assuming insurer which as of the date of the ceding insurer's statutory
45 financial statement:

46 (1) Is domiciled and licensed in, or, in the case of a United
47 States branch of an alien assuming insurer, is entered through and
48 licensed in, a state which employs standards regarding credit for
49 reinsurance substantially similar to those applicable under the Act and
50 this regulation;

1 (2) Maintains a surplus as regards policyholders in an amount
2 not less than \$20,000,000; and

3 (3) Files a properly executed Form AR-1 with the Commissioner as
4 evidence of its submission to this state's authority to examine its
5 books and records.

6 B. The provisions of this section relating to surplus as
7 regards policyholders shall not apply to reinsurance ceded and assumed
8 pursuant to pooling arrangements among insurers in the same holding
9 company system. As used in this section, "substantially similar"
10 standards means credit for reinsurance standards which the Commissioner
11 determines equal or exceed the standards of the Act and this
12 regulation.

13 SECTION 7. Credit for Reinsurance - Reinsurers Maintaining Trust Funds

14 A. Pursuant to Ark. Code Ann. §23-62-305(f), as amended by Act
15 1272 of 1995, effective April 13, 1995, the Commissioner shall allow
16 credit for reinsurance ceded by a domestic insurer to an assuming
17 insurer which, as of the date of the ceding insurer's statutory
18 financial statement, maintains a trust fund in an amount prescribed
19 below in a qualified United States financial institution as defined in
20 Ark. Code Ann. §23-62-307(b), for the payment of the valid claims of
21 its United States policyholders and ceding insurers; their assigns and
22 successors in interest. The assuming insurer shall report annually to
23 the Commissioner substantially the same information as that required
24 to be reported on the NAIC annual statement form by licensed insurers,
25 to enable the Commissioner to determine the sufficiency of the trust
26 fund.

27 B. The following requirements apply to the following categories
28 of assuming insurer:

29 (1) The trust fund for a single assuming insurer shall consist
30 of funds in trust in an amount not less than the assuming insurer's
31 liabilities attributable to business written in the United States, and
32 in addition, a trustee surplus of not less than \$20,000,000.

33 (2) The trust fund for a group of individual unincorporated
34 underwriters shall consist of funds in trust in an amount not less than
35 the group's aggregate liabilities attributable to business written in
36 the United States and, in addition, the group shall maintain a trustee
37 surplus of which \$100,000,000 shall be held jointly for the benefit of
38 the United States ceding insurers of any member of the group. The
39 group shall make available to the Commissioner annual certifications by
40 the group's domiciliary regulator and its independent public
41 accountants of the solvency of each underwriter member of the group.

42 (3) The trust fund for a group of incorporated insurers under
43 common administration, whose members possess aggregate policyholders
44 surplus of \$10,000,000,000 (calculated and reported in substantially
45 the same manner as prescribed by the annual statement instructions and
46 Accounting Practices and Procedures Manual of the National Association
47 of Insurance Commissioners) and which has continuously transacted an
48 insurance business outside the United States for at least three (3)
49 years immediately prior to making application for accreditation, shall
50 consist of funds in trust in an amount not less than the assuming
51 insurers' liabilities attributable to business ceded by United States
52 ceding insurers to any members of the group pursuant to reinsurance

1 contracts issued in the name of such group and, in addition, the group
2 shall maintain a joint trusteed surplus of which \$100,000,000 shall be
3 held jointly for the benefit of United States ceding insurers of any
4 member of the group. The group shall file a properly executed Form
5 AR-1 as evidence of the submission to this state's authority to examine
6 the books and records of any of its members and shall certify that any
7 member examined will bear the expense of any such examination. The
8 group shall make available to the Commissioner annual certifications by
9 the members' domiciliary regulators and their independent public
10 accountants of the solvency of each member of the group.

11 C. The trust shall be established in a form approved by the
12 Commissioner and complying with Ark. Code Ann. §23-62-305(f) of the
13 Regulation of Reserves Act, as amended by Act 1272 of 1995, and this
14 section. The trust instrument shall provide that:

15 (1) Contested claims shall be valid and enforceable out of funds
16 in trust to the extent remaining unsatisfied thirty (30) days after
17 entry of the final order of any court of competent jurisdiction in the
18 United States.

19 (2) Legal title to the assets of the trust shall be vested in
20 the trustee for the benefit of the grantor's United States
21 policyholders and ceding insurers, their assigns and successors in
22 interest.

23 (3) The trust shall be subject to examination as determined by
24 the Commissioner.

25 (4) The trust shall remain in effect for as long as the assuming
26 insurer, or any member or former member of a group of insurers, shall
27 have outstanding obligations under reinsurance agreements subject to
28 the trust.

29 (5) No later than February 28th of each year, the trustees of
30 the trust shall report to the Commissioner in writing setting forth the
31 balance in the trust and listing the trust's investments at the
32 preceding year end, and shall certify the date of termination of the
33 trust, if so planned, or certify that the trust shall not expire prior
34 to the next following December 31st.

35 (6) No amendment to the trust shall be effective unless reviewed
36 and approved in advance by the Commissioner.

37 SECTION 8. Credit for Reinsurance Required by Law

38 Per Ark. Code Ann. §23-62-305(g), the Commissioner shall allow credit
39 for reinsurance ceded by a domestic insurer to an assuming insurer not
40 meeting the requirements of Ark. Code Ann. §23-62-305(a) through (f) of
41 the Act, as amended, but only with respect to the insurance of risks
42 located in jurisdictions where such reinsurance is required by the
43 applicable law or regulation of that jurisdiction. As used in this
44 section, "jurisdiction" means any state, district or territory of the
45 United States and any lawful national government.

46 SECTION 9. Reduction from Liability for Reinsurance Ceded to an 47 Unauthorized Assuming Insurer

48 Pursuant to Ark. Code Ann. §23-62-306, the Commissioner shall allow a
49 reduction from liability for reinsurance ceded by a domestic insurer to
50 an assuming insurer not meeting the requirements of Ark. Code Ann.

1 §23-62-305 in an amount not exceeding the liabilities carried by the
2 ceding insurer. Such reduction shall be in the amount of funds held by
3 or on behalf of the ceding insurer, including funds held in trust for
4 the exclusive benefit of the ceding insurer, under a reinsurance
5 contract with such assuming insurer as security for the payment of
6 obligations thereunder. Such security must be held in the United
7 States subject to withdrawal solely by, and under the exclusive control
8 of, the ceding insurer or, in the case of a trust, held in a qualified
9 United States financial institution as defined in Ark. Code Ann.

- 10 §23-62-307. This security may be in the form of any of the following:
- 11 A. Cash.
 - 12 B. Securities listed by the Securities Valuation Office of the
13 National Association of Insurance Commissioners and qualifying as
14 admitted assets.
 - 15 C. Clean, irrevocable, unconditional and "evergreen" letters of
16 credit issued or confirmed by a qualified United States institution, as
17 defined in Ark. Code Ann. §23-62-307, effective no later than December
18 31st of the year for which filing is being made, and in the possession
19 of the ceding company on or before the filing date of its annual
20 statement. Letters of credit meeting applicable standards of issuer
21 acceptability as of the dates of their issuance, or confirmation shall,
22 notwithstanding the issuing or confirming institution's subsequent
23 failure to meet applicable standards of issuer acceptability, continue
24 to be acceptable as security until their expiration, extension,
25 renewal, modification or amendment, whichever first occurs.
 - 26 D. Any other form of security acceptable to the Commissioner.

27 An admitted asset or a reduction from liability for reinsurance ceded
28 to an unauthorized assuming insurer pursuant to Subsections (A), (B)
29 and (C) of this Section of the rule shall be allowed only when the
30 requirements of Sections 10, 11 or 12 of this regulation are met.

31 SECTION 10. Trust Agreements Qualified under Rule Section 9

32 A. As used in this section:
33 (1) "Beneficiary" means the entity for whose sole benefit the
34 trust has been established and any successor of the beneficiary by
35 operation of law. If a court of law appoints a successor in interest
36 to the named beneficiary, then the named beneficiary includes and is
37 limited to the court-appointed domiciliary receiver, including
38 conservator, rehabilitator or liquidator.

39 (2) "Grantor" means the entity that has established a trust for
40 the sole benefit of the beneficiary. When established in conjunction
41 with a reinsurance agreement, the grantor is the unlicensed,
42 unaccredited assuming insurer.

43 (3) "Obligations", as used in Subsection (B)(11) of this
44 section, means:

- 45 (a) Reinsured losses and allocated loss expenses paid by the
46 ceding company, but not recovered from the assuming insurer;
- 47 (b) Reserves for reinsured losses reported and outstanding;
- 48 (c) Reserves for reinsured losses incurred but not reported;
- 49 and
- 50 (d) Reserves for allocated reinsured loss expenses and
51 unearned premiums.

52 B. Required conditions.

1 (1) The trust agreement shall be entered into between the
2 beneficiary, the grantor and a trustee which shall be a qualified
3 United States financial institution as defined in Ark. Code Ann.
4 §23-62-307 of the Act.

5 (2) The trust agreement shall create a trust account into which
6 assets shall be deposited.

7 (3) All assets in the trust account shall be held by the trustee
8 at the trustee's office in the United States, except that a bank may
9 apply for the Commissioner's permission to use a foreign branch office
10 of such bank as trustee for trust agreements established pursuant to
11 this section. If the Commissioner approves the use of such foreign
12 branch office as trustee, then its use must be approved by the
13 beneficiary in writing and the trust agreement must provide that the
14 written notice described in Subsection B(4)(a) of this section must
15 also be presentable, as a matter of legal right, at the trustee's
16 principal office in the United States.

17 (4) The trust agreement shall provide that:

18 (a) The beneficiary shall have the right to withdraw assets
19 from the trust account at any time, without notice to the grantor,
20 subject only to written notice from the beneficiary to the trustee;

21 (b) No other statement or document is required to be
22 presented in order to withdraw assets, except that the beneficiary
23 may be required to acknowledge receipt of withdrawn assets;

24 (c) It is not subject to any conditions or qualifications
25 outside of the trust agreement; and

26 (d) It shall not contain references to any other agreements
27 or documents except as provided for under Paragraph (11) of this
28 Subsection (B).

29 (5) The trust agreement shall be established for the sole
30 benefit of the beneficiary.

31 (6) The trust agreement shall require the trustee to:

32 (a) Receive assets and hold all assets in a safe place;

33 (b) Determine that all assets are in such form that the
34 beneficiary, or the trustee upon direction by the beneficiary, may
35 whenever necessary negotiate any such assets, without consent or
36 signature from the grantor or any other person or entity;

37 (c) Furnish to the grantor and the beneficiary a statement
38 of all assets in the trust account upon its inception and at
39 intervals no less frequent than the end of each calendar quarter;

40 (d) Notify the grantor and the beneficiary within ten (10)
41 days, of any deposits to or withdrawals from the trust account;

42 (e) Upon written demand of the beneficiary, immediately take
43 any and all steps necessary to transfer absolutely and
44 unequivocally all right, title and interest in the assets held in
45 the trust account to the beneficiary and deliver physical custody
46 of the assets to the beneficiary; and

47 (f) Allow no substitutions or withdrawals of assets from the
48 trust account, except on written instructions from the beneficiary;
49 except that the trustee may, without the consent of but with notice
50 to the beneficiary, upon call or maturity of any trust asset,
51 withdraw such asset upon condition that the proceeds are paid into
52 the trust account.

53 (7) The trust agreement shall provide that, at least thirty (30)
54 days but not more than forty-five (45) days prior to termination of the

1 trust account, written notification of termination shall be delivered
2 by the trustee to the beneficiary.

3 (8) The trust agreement shall be made subject to and governed by
4 the laws of the state in which the trust is established.

5 (9) The trust agreement shall prohibit invasion of the trust
6 corpus for the purpose of paying compensation to, or reimbursing the
7 expenses of, the trustee.

8 (10) The trust agreement shall provide that the trustee shall be
9 liable for its own negligence, willful misconduct or lack of good
10 faith.

11 (11) Notwithstanding other provisions of this regulation, when a
12 trust agreement is established in conjunction with a reinsurance
13 agreement covering risks other than life, annuities, and disability
14 (accident and health), where it is customary practice to provide a
15 trust agreement for a specific purpose, such a trust agreement may,
16 notwithstanding any other conditions in this regulation, provide that
17 the ceding insurer shall undertake to use and apply amounts drawn upon
18 the trust account, without diminution because of the insolvency of the
19 ceding insurer or the assuming insurer, for the following purposes:

20 (a) To pay or reimburse the ceding insurer for the assuming
21 insurer's share under the specific reinsurance agreement regarding
22 any losses and allocated loss expenses paid by the ceding insurer,
23 but not recovered from the assuming insurer, or for unearned
24 premiums due to the ceding insurer if not otherwise paid by the
25 assuming insurer;

26 (b) To make payment to the assuming insurer of any amounts
27 held in the trust account that exceed 102 percent of the actual
28 amount required to fund the assuming insurer's obligations under
29 the specific reinsurance agreement; or

30 (c) Where the ceding insurer has received notification of
31 termination of the trust account and where the assuming insurer's
32 entire obligations under the specific reinsurance agreement remain
33 unliquidated and undischarged ten (10) days prior to the
34 termination date, to withdraw amounts equal to the obligations and
35 deposit those amounts in a separate account, in the name of the
36 ceding insurer in any qualified United States financial institution
37 as defined in Ark. Code Ann. §23-62-307 apart from its general
38 assets, in trust for such uses and purposes specified in
39 Subparagraphs (a) and (b) above as may remain executory after such
40 withdrawal and for any period after the termination date.

41 (12) The reinsurance agreement entered into in conjunction with
42 the trust agreement may, but need not, contain the provisions required
43 by Subsection (D)(1)(b) of this section, so long as these required
44 conditions are included in the trust agreement.

45 C. Permitted conditions.

46 (1) The trust agreement may provide that the trustee may resign
47 upon delivery of a written notice of resignation, effective not less
48 than ninety (90) days after receipt by the beneficiary and grantor of
49 the notice and that the trustee may be removed by the grantor by
50 delivery to the trustee and the beneficiary of a written notice of
51 removal, effective not less than ninety (90) days after receipt by the
52 trustee and the beneficiary of the notice, provided that no such
53 resignation or removal shall be effective until a successor trustee has
54 been duly appointed and approved by the beneficiary and the grantor and

1 all assets in the trust have been duly transferred to the new trustee.
2 (2) The grantor may have the full and unqualified right to vote
3 any shares of stock in the trust account and to receive from time to
4 time payments of any dividends or interest upon any shares of stock or
5 obligations included in the trust account. Any such interest or
6 dividends shall be either forwarded promptly upon receipt to the
7 grantor or deposited in a separate account established in the grantor's
8 name.

9 (3) The trustee may be given authority to invest, and accept
10 substitutions of, any funds in the account, provided that no investment
11 or substitution shall be made without prior approval of the
12 beneficiary, unless the trust agreement specifies categories of
13 investments acceptable to the beneficiary and authorizes the trustee to
14 invest funds and to accept substitutions which the trustee determines
15 are at least equal in market value to the assets withdrawn and that are
16 consistent with the restrictions in Subsection (D)(1)(b) of this
17 section.

18 (4) The trust agreement may provide that the beneficiary may at
19 any time designate a party to which all or part of the trust assets are
20 to be transferred. Such transfer may be conditioned upon the trustee
21 receiving, prior to or simultaneously, other specified assets.

22 (5) The trust agreement may provide that, upon termination of
23 the trust account, all assets not previously withdrawn by the
24 beneficiary shall, with written approval by the beneficiary, be
25 delivered over to the grantor.

26 D. Additional conditions applicable to reinsurance agreements.

27 (1) A reinsurance agreement, which is entered into in
28 conjunction with a trust agreement and the establishment of a trust
29 account, may contain provisions that:

30 (a) Require the assuming insurer to enter into a trust
31 agreement and to establish a trust account for the benefit of the
32 ceding insurer, and specifying what the agreement is to cover;

33 (b) Stipulate that assets deposited in the trust account
34 shall be valued according to their current fair market value and
35 shall consist only of cash in the form of United States legal
36 tender, certificates of deposit issued by a United States bank and
37 payable in United States legal tender, and investments of the types
38 permitted by the Insurance Code or any combination of the above;
39 provided that such investments are issued by an institution that is
40 not the parent, subsidiary or affiliate of either the grantor or
41 the beneficiary. The reinsurance agreement may further specify the
42 types of investments to be deposited. Where a trust agreement is
43 entered into in conjunction with a reinsurance agreement covering
44 risks other than life, annuities and disability (accident and
45 health), then the trust agreement may contain the provisions
46 required by this paragraph in lieu of including such provisions in
47 the reinsurance agreement;

48 (c) Require the assuming insurer, prior to depositing assets
49 with the trustee, to execute assignments or endorsements in blank,
50 or to transfer legal title to the trustee of all shares,
51 obligations or any other assets requiring assignments, in order
52 that the ceding insurer, or the trustee upon the direction of the
53 ceding insurer, may whenever necessary negotiate these assets
54 without consent or signature from the assuming insurer or any other

1 entity;

2 (d) Require that all settlements of account between the
3 ceding insurer and the assuming insurer be made in cash or its
4 equivalent; and

5 (e) Stipulate that the assuming insurer and the ceding
6 insurer agree that the assets in the trust account, established
7 pursuant to the provisions of the reinsurance agreement, may be
8 withdrawn by the ceding insurer at any time, notwithstanding any
9 other provisions in the reinsurance agreement, and shall be
10 utilized and applied by the ceding insurer or its successors in
11 interest by operation of law, including without limitation any
12 liquidator, rehabilitator, receiver or conservator of such company,
13 without diminution because of insolvency on the part of the ceding
14 insurer or the assuming insurer, only for the following purposes:

15 (i) To reimburse the ceding insurer for the assuming
16 insurer's share of premiums returned to the owners of
17 policies reinsured under the reinsurance agreement because
18 of cancellations of such policies;

19 (ii) To reimburse the ceding insurer for the assuming
20 insurer's share of surrenders and benefits or losses paid by
21 the ceding insurer pursuant to the provisions of the
22 policies reinsured under the reinsurance agreement;

23 (iii) To fund an account with the ceding insurer in an
24 amount at least equal to the deduction, for reinsurance
25 ceded, from the ceding insurer liabilities for policies
26 ceded under the agreement. The account shall include, but
27 not be limited to, amounts for policy reserves, claims and
28 losses incurred (including losses incurred but not
29 reported), loss adjustment expenses and unearned premium
30 reserves; and

31 (iv) To pay any other amounts the ceding insurer claims are
32 due under the reinsurance agreement.

33 (2) The reinsurance agreement may also contain provisions that:

34 (a) Give the assuming insurer the right to seek approval
35 from the ceding insurer to withdraw from the trust account
36 all or any part of the trust assets and transfer those
37 assets to the assuming insurer, provided:

38 (i) The assuming insurer shall, at the time of withdrawal,
39 replace the withdrawn assets with other qualified assets
40 having a market value equal to the market value of the
41 assets withdrawn so as to maintain at all times the deposit
42 in the required amount, or

43 (ii) After withdrawal and transfer, the market value of the
44 trust account is no less than 102 percent of the required
45 amount. The ceding insurer shall not unreasonably or
46 arbitrarily withhold its approval.

47 (b) Provide for:

48 (i) The return of any amount withdrawn in excess of the
49 actual amounts required for Subsections (D)(1)(e)(i), (ii)
50 and (iii), or in the case of Subsection (D)(1)(e)(iv), any
51 amounts that are subsequently determined not to be due; and
52 (ii) Interest payments, at a rate not in excess of the prime
53 rate of interest, on the amounts held pursuant to Subsection
54 (D)(1)(e)(iii).

- 1 (c) Permit the award by any arbitration panel or court of
2 competent jurisdiction of:
3 (i) Interest at a rate different from that provided in
4 Subparagraph (b)(ii),
5 (ii) Court of arbitration costs,
6 (iii) Attorney's fees, and
7 (iv) Any other reasonable expenses.
- 8 (3) Financial reporting. A trust agreement may be used to
9 reduce any liability for reinsurance ceded to an unauthorized assuming
10 insurer in financial statements required to be filed with this
11 Department in compliance with the provisions of this regulation when
12 established on or before the date of filing of the financial statement
13 of the ceding insurer. Further, the reduction for the existence of an
14 acceptable trust account may be up to the current fair market value of
15 acceptable assets available to be withdrawn from the trust account at
16 that time, but such reduction shall be no greater than the specific
17 obligations under the reinsurance agreement that the trust account was
18 established to secure.
- 19 (4) The failure of any trust agreement to specifically identify
20 the beneficiary as defined in Subsection (A) of this section shall not
21 be construed to affect any actions or rights which the Commissioner may
22 take or possess pursuant to the provisions of the laws of this state.

23 SECTION 11. Letters of Credit Qualified under Rule Section 9

24 A. The letter of credit must be clean, irrevocable and
25 unconditional and issued or confirmed by a qualified United States
26 financial institution as defined in Ark. Code Ann. §23-62-307. The
27 letter of credit shall contain an issue date and date of expiration;
28 and shall stipulate that the beneficiary need only draw a sight draft
29 under the letter of credit and present it to obtain funds; and that no
30 other document need be presented. The letter of credit shall also
31 indicate that it is not subject to any condition or qualifications
32 outside of the letter of credit. In addition, the letter of credit
33 itself shall not contain reference to any other agreements, documents
34 or entities, except as provided in Subsection (I)(1) below. As used in
35 this section, "beneficiary" means the domestic insurer for whose
36 benefit the letter of credit has been established and any successor of
37 the beneficiary by operation of law. If a court of law appoints a
38 successor in interest to the named beneficiary, then the named
39 beneficiary includes and is limited to the court appointed domiciliary
40 receiver, including conservator, rehabilitator or liquidator.

41 B. The heading of the letter of credit may include a boxed
42 section which contains the name of the applicant and other appropriate
43 notations to provide a reference for the letter of credit. The boxed
44 section shall be clearly marked to indicate that such information is
45 for internal identification purposes only.

46 C. The letter of credit shall contain a statement to the effect
47 that the obligation of the qualified United States financial
48 institution under the letter of credit is in no way contingent upon
49 reimbursement with respect thereto.

50 D. The term of the letter of credit shall be for at least one
51 (1) year and shall contain an "evergreen clause" which prevents the
52 expiration of the letter of credit without due notice from the issuer.

1 The "evergreen clause" shall provide for a period of no less than
2 thirty (30) days' notice prior to expiry date or nonrenewal.
3 E. The letter of credit shall state whether it is subject to
4 and governed by the laws of this state or the most recent publication
5 of the Uniform Customs and Practice for Documentary Credits of the
6 International Chamber of Commerce; and all drafts drawn thereunder
7 shall be presentable at an office in the United States of a qualified
8 United States financial institution.

9 F. If the letter of credit is made subject to the most recent
10 publication of the Uniform Customs and Practice for Documentary Credits
11 of the International Chamber of Commerce, then the letter of credit
12 shall specifically address and make provision for an extension of time
13 to draw against the letter of credit in the event that one or more of
14 the occurrences specified in the most recent publication occur.

15 G. The letter of credit shall be issued or confirmed by a
16 qualified United States financial institution authorized to issue
17 letters of credit, pursuant to Ark. Code Ann. §23-62-307.

18 H. If the letter of credit is issued by a qualified United
19 States financial institution authorized to issue letters of credit,
20 other than a qualified United States financial institution as described
21 in Subsection (G) of this section, then the following additional
22 requirements shall be met:

23 (1) The issuing qualified United States financial institution
24 shall formally designate the confirming qualified United States
25 financial institution as its agent for the receipt and payment of the
26 drafts, and

27 (2) The "evergreen clause" shall provide for thirty (30) days'
28 notice prior to expiry date for nonrenewal.

29 I. Reinsurance agreement provisions.

30 (1) The reinsurance agreement in conjunction with which the
31 letter of credit is obtained may contain provisions which:

32 (a) Require the assuming insurer to provide letters of
33 credit to the ceding insurer and specify what they are to cover.

34 (b) Stipulate that the assuming insurer and ceding insurer
35 agree that the letter of credit provided by the assuming insurer
36 pursuant to the provisions of the reinsurance agreement may be
37 drawn upon at any time, notwithstanding any other provisions in the
38 agreement, and shall be utilized by the ceding insurer or its
39 successors in interest only for one (1) or more of the following
40 reasons:

41 (i) To reimburse the ceding insurer for the assuming
42 insurer's share of premiums returned to the owners of
43 policies reinsured under the reinsurance agreement on
44 account of cancellations of such policies;

45 (ii) To reimburse the ceding insurer for the assuming
46 insurer's share of surrenders and benefits or losses paid by
47 the ceding insurer under the terms and provisions of the
48 policies reinsured under the reinsurance agreement;

49 (iii) To fund an account with the ceding insurer in an
50 amount at least equal to the deduction, for reinsurance
51 ceded, from the ceding insurer's liabilities for policies
52 ceded under the agreement; such amount shall include, but
53 not be limited to, amounts for policy reserves, claims and
54 losses incurred and unearned premium reserves; and

1 (iv) To pay any other amounts the ceding insurer claims are
2 due under the reinsurance agreement.

3 (c) All of the foregoing provisions of Paragraph (1) of this
4 subsection should be applied without diminution because of
5 insolvency on the part of the ceding insurer or assuming insurer.

6 (2) Nothing contained in Paragraph (1) of this subsection shall
7 preclude the ceding insurer and assuming insurer from providing for:

8 (a) An interest payment, at a rate not in excess of the
9 prime rate of interest, on the amounts held pursuant to Paragraph
10 (1)(b)(iii) of this subsection; and/or

11 (b) The return of any amounts drawn down on the letters of
12 credit in excess of the actual amounts required for the above or,
13 in the case of Paragraph (1)(b)(iv) of this subsection, any amounts
14 that are subsequently determined not to be due.

15 (3) When a letter of credit is obtained in conjunction with a
16 reinsurance agreement covering risks other than life, annuities and
17 disability (health), where it is customary practice to provide a letter
18 of credit for a specific purpose, then the reinsurance agreement may,
19 in lieu of Paragraph (1)(b) of this subsection, require that the
20 parties enter into a "Trust Agreement" which may be incorporated into
21 the reinsurance agreement or be a separate document.

22 J. A letter of credit may not be used to reduce any liability
23 for reinsurance ceded to an unauthorized assuming insurer in financial
24 statements required to be filed with this Department unless an
25 acceptable letter of credit with the filing ceding insurer as
26 beneficiary has been issued on or before the date of filing of the
27 financial statement. Further, the reduction for the letter of credit
28 may be up to the amount available under the letter of credit, but no
29 greater than the specific obligation under the reinsurance agreement
30 which the letter of credit was intended to secure.

31 SECTION 12. Other Security

32 A ceding insurer may take credit for unencumbered funds withheld by the
33 ceding insurer in the United States subject to withdrawal solely by the
34 ceding insurer and under its exclusive control.

35 SECTION 13. Reinsurance Contract

36 Credit will not be granted to a ceding insurer for reinsurance effected
37 with assuming insurers meeting the requirements of Sections 4, 5, 6, 7,
38 or 9 of this regulation or otherwise in compliance with Ark. Code Ann.
39 §23-62-305, as amended by Act 1272 of 1995, after the adoption of this
40 regulation unless the reinsurance agreement:

41 A. Includes a proper insolvency clause pursuant to Ark. Code
42 Ann. §23-62-205; and

43 B. Includes a provision whereby the assuming insurer, if an
44 unauthorized assuming insurer, has submitted to the jurisdiction of a
45 court of competent jurisdiction within the United States, has agreed to
46 comply with all requirements necessary to give such court jurisdiction,
47 has designated an agent upon whom service of process may be effected,
48 and has agreed to abide by the final decision of such court.

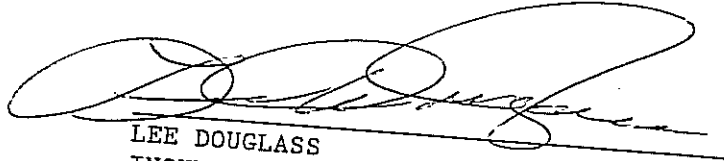
1 SECTION 14. Contracts Affected

2 All new and renewal reinsurance transactions entered into after
3 January 1, 1996 shall conform to the requirements of the Act and this
4 regulation if credit is to be given to the ceding insurer for such
5 reinsurance.

6 SECTION 15. Effective Date

7 The provisions of this rule shall become effective on January 1,
8 1996, upon statutory filing per Arkansas law.

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12



LEE DOUGLASS
INSURANCE COMMISSIONER
ARKANSAS INSURANCE DEPARTMENT

13
14

1-24-94
DATE

15 CONTACT PERSON: Bruce Heffner, CPCU, Associate Counsel, Arkansas
16 Insurance Department, 1123 South University Avenue, Little Rock,
17 Arkansas 72204; (501) 686-2999.

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3 (1-1-96)

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CERTIFICATE OF ASSUMING INSURER

5 I, _____,
6 (name of officer) (title of officer)

7 of _____, the assuming
8 (name of assuming insurer)

9 insurer under a reinsurance agreement(s) with one or more insurers
10 domiciled in _____, hereby certify that
11 (name of state)

12 _____ ("Assuming Insurer");
13 (name of assuming insurer)

14 1. Submits to the jurisdiction of any court of competent jurisdiction
15 in _____ for the adjudication of any
16 (cedant's state of domicile)

17 issues arising out of the reinsurance agreement(s), agrees to comply
18 with all requirements necessary to give such court jurisdiction, and
19 will abide by the final decision of such court or any appellate court,
20 in the event of an appeal. Nothing in this paragraph constitutes or
21 should be understood to constitute a waiver of Assuming Insurer's
22 rights to commence an action in any court of competent jurisdiction in
23 the United States, to remove an action to a United States District
24 Court, or to seek a transfer of a case to another court as permitted by
25 the laws of the United States or of any state in the United States.
26 This paragraph is not intended to conflict with or override the
27 obligation of the parties to the reinsurance agreement(s) to arbitrate
28 their disputes if such an obligation is created in the agreement(s).

29 2. Designates the Insurance Commissioner of _____
30 (cedant's state of domicile)

31 as its lawful attorney upon whom may be served any lawful process in
32 any action, suit or proceeding arising out of the reinsurance
33 agreement(s) instituted by or on behalf of the ceding insurer.

34 3. Submits to the authority of the Insurance Commissioner of
35 _____ to examine its books and records
36 (cedant's state of domicile)

37 and agrees to bear the expense of any such examination.

38 4. Submits with this form a current list of insurers domiciled in
39 _____ reinsured by Assuming Insurer and
40 (cedant's state of domicile)

1 undertakes to submit additions to or deletions from the list to the
2 Insurance Commissioner at least once per calendar quarter.

3 Dated: _____
4 (name of assuming insurer)
5

6 BY: _____
7 (name of officer)
8

9 _____
10 (title of officer)