

From: Holland, Andrew
Sent: Friday, June 16, 2000 2:53 PM
To: Umansky, Joseph; Brown, PaulA@Comptroller's; Spier, Arnold
Cc: Harkins, Ken
Subject: Warranty

Attachments: shagmt.doc
Draft of the Subscription/Shareholders Agreement is attached.



shagmt.doc (68 KB)

**PLAINTIFF'S
EXHIBIT
421**

**DEFENDANT'S
EXHIBIT**
5-17-07
F

SUBSCRIPTION AND OPERATING AGREEMENT

SUBSCRIPTION AND OPERATING AGREEMENT, dated as of June [], 2000 (the “Agreement”), by and among Capco Reinsurance Company Ltd., a Barbados corporation (the “Company”), [AIG Company], a [] corporation (the “Preferred Shareholder”), [WestGen], a [] corporation (“WestGen”), [Common Shareholder 1 (“ ”)], [Common Shareholder 2 (“ ”)] and [Common Shareholder 3 (“ ”)] (each of WestGen, _____, _____, and _____, a “Common Shareholder” and together, the “Common Shareholders”).

W I T N E S S E T H:

WHEREAS, the Company desires to issue and sell to the Preferred Shareholder, and the Preferred Shareholder desires to purchase from the Company, for aggregate consideration of \$[], [] of the Company’s [Series A] Preferred Shares, par value [] per share (the “Preferred Shares”); and

WHEREAS, the Company, the Preferred Shareholder and the Common Shareholders desire to set forth certain provisions relating to the governance of the Company and certain other matters.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements hereinafter contained, the parties hereby agree as follows:

**ARTICLE I
AUTHORIZATION; CLOSING**

1.1 Authorization. The Company has authorized the issuance to the Preferred Shareholder of [] Preferred Shares, issuable as provided in Section 1.2 hereof.

1.2 Closing.

(a) The closing of the transactions contemplated hereby (the “Closing”) shall occur at such place and at such time as the parties hereto may agree and shall occur contemporaneously with the closing under the Share Purchase Agreement, dated as of June [], 2000 (the “Share Purchase Agreement”), by and among WestGen and each of the other Common Shareholders.

(b) At the Closing, the Company shall issue and sell to the Preferred Shareholder, and the Preferred Shareholder shall purchase from the Company, upon the terms and subject to the conditions set forth herein, [] Preferred Shares for an aggregate purchase price of \$[] (the “Purchase Price”).

C:\[autopath]\[autoname].doc

(c) At the Closing, each of the Company and the Preferred Shareholder shall execute and deliver to each other, as applicable, (i) certificates in respect of the Preferred Shares described above, and (ii) any other certificates, resolutions or documents which either the Company or the Preferred Shareholder shall reasonably require.

ARTICLE II REPRESENTATIONS AND WARRANTIES OF THE COMPANY

The Company hereby represents and warrants to the Preferred Shareholder and the Common Shareholders as follows:

2.1 Organization and Good Standing. The Company is a corporation duly organized, validly existing and in good standing under the laws of Barbados and has all requisite corporate power and authority to own, lease and operate its properties and to carry on its business.

2.2 Capitalization. As of the date hereof, the authorized capital of the Company consists of [] Common Shares, par value [] per share (the "Common Shares"), of which [] Common Shares are issued and outstanding, and [] Preferred Shares, none of which are issued and outstanding.

2.3 Authorization. The execution, delivery and performance by the Company of this Agreement, including the issuance of the Preferred Shares to the Preferred Shareholder, have been duly authorized by all requisite corporate action. This Agreement has been duly executed and delivered by the Company, and is the legal, valid and binding obligation of the Company, enforceable against it in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium and similar laws affecting creditors' rights and remedies generally, and subject, as to enforceability, to general principles of equity, including principles of commercial reasonableness, good faith and fair dealing (regardless of whether enforcement is sought in a proceeding at law or in equity). The Preferred Shares, when issued to the Preferred Shareholder as contemplated hereby, will be validly issued and outstanding, fully paid and non-assessable and not subject to preemptive or any other similar rights of the shareholders of the Company or others.

2.4 No Conflicts: Consents of Third Parties. The execution, delivery and performance of this Agreement, the issuance, sale and delivery of the Preferred Shares, and compliance with the provisions hereof by the Company will not (i) conflict with, or result in the breach of, any provision of the Articles of Incorporation or By-laws or comparable organizational documents of the Company; (ii) conflict with, violate, result in the breach or termination of, or constitute a default under any note, bond, mortgage, indenture, license, agreement or other instrument or obligation to which the Company is a party or by which the Company or its properties or assets is bound; (iii) violate any statute, rule, regulation, order or decree of any governmental body by which the Company is bound; or (iv) result in the creation of any lien, pledge, mortgage, deed of trust, security interest, claim, lease, charge, option, right of first refusal, preemptive right, easement, servitude, transfer restriction under any shareholder or similar agreement, encumbrance or any other restriction or limitation whatsoever (collectively,

“Liens”) upon the properties or assets of the Company. No consent, waiver, approval, order, permit or authorization of, or declaration or filing with, or notification to, any person, including without limitation any governmental body, is required on the part of the Company in connection with the execution, delivery and performance of the Agreement, or the compliance by the Company with any of the provisions hereof, except for [the Barbados Supervisor of Insurance], which consent has been obtained as of the date hereof.

2.5 No Liabilities. As of the date hereof, the Company has no liabilities, direct or indirect, absolute or contingent, and there is no existing condition, situation or set of circumstances which could result in any such liabilities. [ensure assignment/assumption of all reinsurance treaties; any tax issues?]

2.6 No Litigation. There is no suit, action, proceeding, investigation, claim or order pending or, to the knowledge of the Company, threatened against the Company or to which the Company is otherwise a party before any court, or before any governmental department, commission, board, agency, or instrumentality.

2.7 Compliance with Laws; Permits. The Company is in compliance with all laws applicable to the Company or to the conduct of its business and operations or the use of its properties and assets.

2.8 No Misrepresentation. No representation or warranty of the Company contained in this Agreement or in any certificate or other instrument furnished by the Company to the Common Shareholders and the Preferred Shareholder pursuant to the terms hereof, contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements contained herein or therein not misleading.

ARTICLE III REPRESENTATIONS AND WARRANTIES OF THE PREFERRED SHAREHOLDER

The Preferred Shareholder hereby represents and warrants to the Company and the Common Shareholders as follows:

3.1 Organization and Good Standing. The Preferred Shareholder is a corporation duly organized, validly existing and in good standing under the laws of [] and has all requisite corporate power and authority to own, lease and operate its properties and to carry on its business.

3.2 Authority. The execution, delivery and performance by the Preferred Shareholder of this Agreement have been duly authorized by all requisite corporate action. This Agreement has been duly executed and delivered by the Preferred Shareholder, and is the legal, valid and binding obligation of the Preferred Shareholder, enforceable against it in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium and similar laws affecting creditors' rights and remedies generally, and subject, as to enforceability, to general

principles of equity, including principles of commercial reasonableness, good faith and fair dealing (regardless of whether enforcement is sought in a proceeding at law or in equity).

3.3 No Conflicts; Consents of Third Parties. The execution, delivery and performance of this Agreement and compliance with the provisions hereof by the Preferred Shareholder will not (i) conflict with, or result in the breach of, any provision of the Articles of Incorporation or By-laws or comparable organizational documents of the Preferred Shareholder; (ii) conflict with, violate, result in the breach or termination of, or constitute a default under any note, bond, mortgage, indenture, license, agreement or other instrument or obligation to which the Preferred Shareholder is a party or by which the Preferred Shareholder or its properties or assets is bound; or (iii) violate any statute, rule, regulation, order or decree of any governmental body by which the Preferred Shareholder is bound, other than any conflicts, violations or breaches which would not, individually or in the aggregate, have a material adverse effect on the Preferred Shareholder. No consent, waiver, approval, order, permit or authorization of, or declaration or filing with, or notification to, any person, including without limitation any governmental body, is required on the part of the Preferred Shareholder in connection with the execution, delivery and performance of the Agreement, or the compliance by the Preferred Shareholder with any of the provisions hereof, except for [the Barbados Supervisor of Insurance], which consent has been obtained as of the date hereof.

3.4 Investment Intention. The Preferred Shareholder is acquiring the Preferred Shares for its own account, for investment purposes only and not with a view to the distribution thereof.

ARTICLE IV REPRESENTATIONS AND WARRANTIES OF WESTGEN

WestGen hereby represents and warrants to the Company, the Preferred Shareholder and each other Common Shareholder as follows:

3.1 Organization and Good Standing. WestGen is a corporation duly organized, validly existing and in good standing under the laws of [_____] and has all requisite corporate power and authority to own, lease and operate its properties and to carry on its business.

3.2 Authority. The execution, delivery and performance by WestGen of this Agreement have been duly authorized by all requisite corporate action. This Agreement has been duly executed and delivered by WestGen, and is the legal, valid and binding obligation of WestGen, enforceable against it in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium and similar laws affecting creditors' rights and remedies generally, and subject, as to enforceability, to general principles of equity, including principles of commercial reasonableness, good faith and fair dealing (regardless of whether enforcement is sought in a proceeding at law or in equity).

3.3 No Conflicts; Consents of Third Parties. The execution, delivery and performance of this Agreement and compliance with the provisions hereof by WestGen will not

(i) conflict with, or result in the breach of, any provision of the Articles of Incorporation or By-laws or comparable organizational documents of WestGen; (ii) conflict with, violate, result in the breach or termination of, or constitute a default under any note, bond, mortgage, indenture, license, agreement or other instrument or obligation to which WestGen is a party or by which WestGen or its properties or assets is bound; or (iii) violate any statute, rule, regulation, order or decree of any governmental body by which WestGen is bound, other than any conflicts, violations or breaches which would not, individually or in the aggregate, have a material adverse effect on WestGen. No consent, waiver, approval, order, permit or authorization of, or declaration or filing with, or notification to, any person, including without limitation any governmental body, is required on the part of WestGen in connection with the execution, delivery and performance of the Agreement, or the compliance by WestGen with any of the provisions hereof.

ARTICLE V REPRESENTATIONS AND WARRANTIES OF THE COMMON SHAREHOLDERS

Each Common Shareholder other than WestGen, for such Common Shareholder only and not for any other Common Shareholder, hereby represents and warrants to the Company, the Preferred Shareholder, WestGen and each other Common Shareholder as follows:

5.1 Authority. Such Common Shareholder has full power and authority to execute and deliver this Agreement and to consummate the transactions contemplated hereby. This Agreement has been duly executed and delivered by such Common Shareholder and constitutes the legal, valid and binding obligation of such Common Shareholder, enforceable against such Common Shareholder in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium and similar laws affecting creditors' rights and remedies generally, and subject, as to enforceability, to general principles of equity, including principles of commercial reasonableness, good faith and fair dealing (regardless of whether enforcement is sought in a proceeding at law or in equity).

5.2 No Conflicts: Consents of Third Parties. The execution, delivery and performance of this Agreement and compliance with the provisions hereof by such Common Shareholder will not (i) conflict with, violate, result in the breach or termination of, or constitute a default under any note, bond, mortgage, indenture, license, agreement or other instrument or obligation to which such Common Shareholder is a party or by which such Common Shareholder or its properties or assets is bound; (ii) violate any statute, rule, regulation, order or decree of any governmental body by which such Common Shareholder is bound; or (iii) result in the creation of any Lien upon the properties or assets of such Common Shareholder. No consent, waiver, approval, order, permit or authorization of, or declaration or filing with, or notification to, any person, including without limitation any governmental body, is required on the part of such Common Shareholder in connection with the execution, delivery and performance of the Agreement, or the compliance by such Common Shareholder with any of the provisions hereof.

ARTICLE VI
CORPORATE GOVERNANCE MATTERS

6.1 Board of Directors. From and after the Closing Date, the board of directors of the Company (the "Board of Directors") shall consist of [three] directors. [appoint John Marion and Trevor Carmichael?]

6.2 Preferred Shareholder Representative. The Preferred Shareholder shall have the right to designate a representative to attend meetings of the Board of Directors (the "Representative"). The Representative shall be entitled to receive notice of all meetings of the Board of Directors, as well as copies of all meeting agendas or other materials distributed to directors (including any proposed action by written consent).

6.3 Limitation on Conduct of Business. The Company shall not effect any of the following actions without the prior consent of a [majority] [two-thirds] of the holders of the Common Shares and the Preferred Shares, each voting separately as a class:

- (a) engage in any business other than the proposed reinsurance arrangement with National Union Fire Insurance Company of Pittsburgh, Pa.;
- (b) sell the principal assets of the Company;
- (c) borrow any sum of money;
- (d) make any loan or advance or give any credit to any person or entity (each, a "Person");
- (e) give any guarantee or indemnity to secure the liabilities or obligations of any Person;
- (f) enter into any contract, arrangement or commitment involving an expenditure more than \$[_____];
- (g) issue any unissued Common Shares or Preferred Shares, create a new class or series of equity securities of the Company or alter any rights attaching to either the Common Shares or the Preferred Shares;
- (h) create or acquire any subsidiary;
- (i) enter into any joint venture, partnership, merger, consolidation, profit sharing, or recapitalization agreement, or any agreement to sell all or substantially all of the Company's assets with any Person;
- (j) issue any debentures, warrants, rights or other securities convertible into Common Shares or Preferred Shares;

(k) acquire, purchase or subscribe for any shares, debentures, mortgages or securities (or any interest therein) in any Person;

(l) adopt any employee benefit program or incentive plan;

(m) engage any employee of the Company;

(n) amend the Company's Articles of Incorporation or By-laws;

(o) alter the number of the Company's directors; or

(p) liquidate or wind-up the Company.

6.4 Management Agreement. The Company shall enter into a management agreement with [] upon such terms as the parties thereto shall in good faith negotiate providing for, among other services, such accounting, financial, tax and services as the Company may require.

ARTICLE VII TRANSFERS OF COMMON SHARES AND PREFERRED SHARES

7.1 Restrictions on Transfer. During the term of this Agreement, no holder of Preferred Shares or Common Shares may, directly or indirectly, sell, assign, pledge, encumber, hypothecate, grant a security interest in, or otherwise transfer (each, a "Transfer") any Common Shares or Preferred Shares held by it except as permitted by Section 7.2 hereof. The Company shall not, and shall not permit any transfer agent or registrar for the Common Shares or Preferred Shares to, transfer upon the books of the Company any Common Shares or Preferred Shares to any transferee other than in accordance with this Agreement. Any purported transfer not in compliance with Agreement shall be void.

7.2 Permitted Transfers. Notwithstanding the provisions of Section 7.1 hereof, (i) each Common Shareholder other than WestGen shall be permitted to pledge its Common Shares to the Preferred Shareholder pursuant to those certain Pledge Agreements, dated as of June [], 2000, by and between the Preferred Shareholder and such Common Shareholder, (ii) each of the Preferred Shareholder and WestGen shall be permitted to Transfer its Preferred Shares and Common Shares, respectively, to one or more subsidiaries or Affiliates, and (iii) any shareholder shall be permitted to Transfer its Common Shares or Preferred Shares with the prior written consent of all other shareholders of the Company; provided, however, that any permitted transferee shall have executed and delivered to the Company and all other shareholders of the Company an instrument in customary form and reasonably satisfactory to such shareholders agreeing to be bound by the provisions of this Agreement applicable to holders of Common Shares and Preferred Shares. For purposes of this Section 7.2, (A) an "Affiliate" of any Person shall mean any other Person that, directly or indirectly, controls, is controlled by or is under common control with, such Person, and (B) "control" shall mean the possession, directly or indirectly, of power to direct or cause the direction of management or policies (whether through

ownership of securities or partnership or other interests, by contract or otherwise) of any other Person.

ARTICLE VIII CONDITIONS TO CLOSING

8.1 Conditions Precedent to Obligations of the Preferred Shareholder. The obligation of the Preferred Shareholder to consummate the transactions contemplated by this Agreement is subject to the fulfillment, on or prior to the Closing Date, of each of the following conditions (any or all of which may be waived by the Preferred Shareholder in whole or in part):

(a) all representations and warranties of the Company, WestGen and the other Common Shareholders contained herein shall be true and correct in all material respects, at and as of the Closing Date, except to the extent expressly made as of an earlier date; and

(b) each of the Company, WestGen and the other Common Shareholders shall have performed and complied in all material respects with all obligations and covenants required by this Agreement to be performed or complied with by such party on or prior to the Closing Date.

8.2 Conditions Precedent to Obligations of the Company. The obligations of the Company to consummate the transactions contemplated by this Agreement are subject to the fulfillment, on or prior to the Closing Date, of each of the following conditions (any or all of which may be waived by the Company in whole or in part):

(a) all representations and warranties of the Preferred Shareholder, WestGen and the other Common Shareholders contained herein shall be true and correct in all material respects, at and as of the Closing Date; and

(b) each of the Preferred Shareholder, WestGen and the other Common Shareholders shall have performed and complied in all material respects with all obligations and covenants required by this Agreement to be performed or complied with by such party on or prior to the Closing Date.

ARTICLE IX DOCUMENTS TO BE DELIVERED

9.1 Deliveries by the Company to the Preferred Shareholder. At the Closing, the Company shall deliver, or shall cause to be delivered, to the Preferred Shareholder certificates evidencing the Preferred Shares, a receipt for the Purchase Price paid at Closing and any other certificates, resolutions or documents deliverable pursuant to Section 1.2 hereof.

9.2 Deliveries by the Preferred Shareholder to the Company. At the Closing, the Preferred Shareholder shall delivered to the Company the Purchase Price, a receipt for the

Preferred Shares and any other certificates, resolutions or documents deliverable pursuant to Section 1.2 hereof.

ARTICLE X INDEMNIFICATION

10.1 Indemnification. Each party hereto (the “Indemnifying Party”) hereby agrees to indemnify and hold each of the other parties hereto, and any of such parties’ directors, officers, employees, agents, successors and assigns (collectively, the “Indemnified Parties”) harmless from and against:

- (a) any and all losses, liabilities, obligations, damages, costs and expenses (collectively, “Losses”) based upon, attributable to or resulting from the failure of any representation or warranty made by the Indemnifying Party, or any representation or warranty contained in any certificate delivered by or on behalf of the Indemnifying Party pursuant to this Agreement, to be true and correct in all respects as of the date made;
- (b) any and all Losses based upon, attributable to or resulting from the breach of any covenant or other agreement on the part of such Indemnifying Party under this Agreement; and
- (c) any and all notices, actions, suits, proceedings, claims, demands, assessments, judgments, costs, penalties and expenses, including attorneys’ and other professionals’ fees and disbursements (collectively, “Expenses”) incident to any Losses, with respect to which indemnification is provided hereunder.

ARTICLE XI CONFIDENTIALITY

11.1 Confidentiality. Each of the parties hereto acknowledges and agrees that it

ARTICLE XII TERMINATION

12.1 Prior to Closing. This Agreement may be terminated and the transactions contemplated hereby may be abandoned at any time before the Closing:

- (a) by mutual written consent of the Company and the Preferred Shareholder;
- (b) by the Preferred Shareholder, if the Company or any Common Shareholder has materially breached any representation, warranty, or covenant or agreement and such breach is not capable of being cured prior to the Closing;

- (c) by the Company, if the Preferred Shareholder or any Common Shareholder has materially breached any representation, warranty, or covenant or agreement and such breach is not capable of being cured prior to the Closing; or
- (d) by the Company or the Preferred Shareholder at any time after [_____, 2000].

12.2 Procedure Upon Termination Prior to Closing. In the event of termination and abandonment of this Agreement pursuant to Section 8.1, written notice thereof shall forthwith be given to the other parties and this Agreement shall terminate and the transactions contemplated hereby shall be abandoned, without further action by any party.

12.3 Termination After Closing. After Closing, the Company, the Preferred Shareholder and the Common Shareholders shall continue to be bound by the provisions of this Agreement until this Agreement is terminated by written consent of the Preferred Shareholder and all of the Common Shareholders. [Elective termination upon material breach by or bankruptcy of a shareholder?]

ARTICLE XIII MISCELLANEOUS

13.1 Parties Bound. Each party hereto undertakes with the others to exercise its obligations in relation to the Company so as to ensure that the Company fully and promptly observes performs and complies with its obligations under this Agreement.

13.2 Nature and Survival of Representations and Warranties. All representations and warranties and agreements made by the parties hereto in this Agreement or pursuant hereto shall survive the Closing hereunder and any investigation at any time made by or on behalf of any party hereto. No suit or action may be commenced for claims under Section 10.1 at any time more than [_____] after the Closing Date

13.3 Further Assurances. Each of the parties hereto agrees to execute and deliver all such other documents or agreements and to take all such other action as may be reasonably necessary or desirable for further effectuate the purposes and intent of this Agreement and the consummation of the transactions contemplated hereby.

13.4 Injunctive Relief. The parties hereto agree and acknowledge that it would be impossible to measure in money the damages that would be suffered if any party hereto should breach any obligation, covenant or representation herein imposed or made, and that in the event of any such breach, the non-breaching parties would be irreparably damaged and would not have an adequate remedy at law. Any such non-breaching party shall, therefore, be entitled to injunctive relief, including specific performance, to enforce such obligations, and if any action should be brought in equity to enforce any of the provisions of this Agreement, none of the other parties hereto shall raise the defense that there is an adequate remedy at law.

13.5 [Submission to Jurisdiction; Consent to Service of Process.

(a) The parties hereto hereby irrevocably submit to the non-exclusive jurisdiction of [any federal or state court located within the State of New York] over any dispute arising out of or relating to this Agreement or any of the transactions contemplated hereby and each party hereby irrevocably agrees that all claims in respect of such dispute or any suit, action proceeding related thereto may be heard and determined in such courts. The parties hereby irrevocably waive, to the fullest extent permitted by applicable law, any objection that they may now or hereafter have to the laying of venue of any such dispute brought in such court or any defense of inconvenient forum for the maintenance of such dispute. Each of the parties hereto agrees that a judgment in any such dispute may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

(b) Each of the parties hereto hereby consents to process being served by any party to this Agreement in any suit, action or proceeding by the mailing of a copy thereof in accordance with the provisions of Section 13.6 hereof.

13.6 Notices. All notices and other communications under this Agreement shall be in writing and deemed to have been duly given if sent by registered airmail, internationally recognized overnight delivery service, or facsimile transmission as follows (or to such other address as a party may have specified by notice given to the other party pursuant to this provision):

If to the Company to:

[_____
[_____
[_____
Attention: [_____
Facsimile: [_____]

If to WestGen, to:

[WestGen]
[_____
[_____
Attention: [_____
Telecopier: [_____]

If to the Preferred Shareholder, to:

[AIG Company]
[]
[]
Attention: []
Facsimile: []

with a copy to:

American International Companies
160 Water Street, 24th Floor
New York, NY 10038 USA
Attention: General Counsel, Domestic Brokerage Group
Facsimile: (212) 820-4504

[Add Common Shareholders]

Any notice sent by registered airmail shall be deemed to have been delivered seven days after dispatch, any notice sent by internationally recognized overnight delivery service shall be deemed to have been delivered upon receipt, and any notice sent by facsimile transmission shall be deemed to have been delivered upon confirmed transmission.

13.7 Entire Agreement; Amendments and Waivers. This Agreement (including the schedules and exhibits hereto) represents the entire understanding and agreement between the parties hereto with respect to the subject matter hereof and can be amended, supplemented or changed, and any provision hereof can be waived, only by written instrument making specific reference to this Agreement signed by the party against whom enforcement of any such amendment, supplement, modification or waiver is sought. The waiver by any party hereto of a breach of any provision of this Agreement shall not operate or be construed as a further or continuing waiver of such breach or as a waiver of any other or subsequent breach. No failure on the part of any party to exercise, and no delay in exercising, any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of such right, power or remedy by such party preclude any other or further exercise thereof or the exercise of any other right, power or remedy. All remedies hereunder are cumulative and are not exclusive of any other remedies provided by law.

13.8 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of [Barbados].

13.9 Severability. The provisions of this Agreement shall be deemed severable, so that if any provision hereof is declared invalid under applicable law, all other provisions of this Agreement shall continue in full force and effect.

13.10 Binding Effect; Assignment. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns. Nothing in this Agreement shall create or be deemed to create any third party beneficiary rights in any person or entity not a party to this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first set forth above.

CAPCO REINSURANCE COMPANY LTD.

By: _____
Name:
Title:

[AIG COMPANY]

By: _____
Name:
Title:

[WESTGEN]

By: _____
Name:
Title:

[Common Shareholder 1]

[Common Shareholder 2]

[Common Shareholder 3]

C:\[autopath]\[autoname].doc