

STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

Docket No. 03-E-0112

**In the Matter of the Liquidation of
US International Reinsurance Company**

**AFFIDAVIT OF PETER A. BENGELSDORF, SPECIAL DEPUTY
LIQUIDATOR, IN SUPPORT OF MOTION FOR APPROVAL OF
RELEASE AGREEMENT AND DISTRIBUTION OF ASSETS**

I, Peter A. Bengelsdorf, hereby depose and say:

1. I was appointed Special Deputy Liquidator of US International Reinsurance Company (“USI Re”) by the Insurance Commissioner for the State of New Hampshire, as Liquidator (“Liquidator”) of USI Re. I submit this affidavit in support of the Liquidator’s Motion for Approval of Release Agreement with the United States. The facts and information set forth are either within my own knowledge gained through my involvement with this matter, in which case I confirm that they are true, or are based on information provided to me by others, in which case they are true to the best of my knowledge, information, and belief.

2. USI Re is a New Hampshire-domiciled reinsurance company subject to regulation by the New Hampshire Insurance Department. USI Re is an indirect, wholly-owned subsidiary of The Home Insurance Company (“Home”) which is the subject of a separate liquidation proceeding before the Court. USI Re has never had any employees, as it was operated until 1996 by employees of Home and thereafter, until commencement of the liquidation proceeding in June 2003, by employees of Risk Enterprise Management Limited. Prior to 1990, when it stopped writing business, USI Re wrote exclusively reinsurance.

3. On June 13, 2003, the Court entered an Order of Liquidation placing USI Re in liquidation and appointing the Commissioner as Liquidator.¹ Since that time, the liquidation has been proceeding under the supervision of the Court and in accordance with the Insurers Rehabilitation and Liquidation Act, RSA 402-C. On August 19, 2008, the Court entered an order establishing December 31, 2008, as the deadline for final submission or amendment of proofs of claim in the USI Re estate. All 292 proofs of claim have been determined and the Court has approved the Liquidator's recommendations.

4. To address concerns respecting the federal priority statute, 31 U.S.C. § 3713, the Liquidator has entered a release agreement with the United States, subject to approval by the Court. The Liquidator requests that the Court approve the release agreement with the United States.

5. All assets of the USI Re estate that warrant collection have been collected. All claims in the USI Re estate have been determined and approved. Assuming that the release agreement with the United States is approved, the Liquidator believes that a final distribution of assets to Class V creditors of the USI Re estate is appropriate at this time pursuant to RSA 402-C:46, I. Accordingly, the Liquidator seeks the Court's approval of such as distribution.

6. Following the final distribution to the Class V creditors of the USI Re estate, the Liquidator will address final administrative matters and move for approval to dispose of records. Once that is complete, the Liquidator will file a motion for discharge and for termination of the proceeding.

7. As a result of the Ruthardt decision, the United States can – subject to any applicable statutes of limitation – assert claims at any time, regardless of claim-filing deadlines under state insurer liquidation statutes. Moreover, these decisions leave open the possibility that,

¹ Also on June 13, 2003, the Court entered a separate Order of Liquidation for Home.

if a liquidator distributed all the assets of the estate, the United States might file a late claim and contend that the estate's inability to pay the claim makes the liquidator personally liable for the claim under the federal priority statute. In view of the uncertainties created by the federal priority statute and related decisions, the Liquidator believed it prudent to obtain a waiver of federal priority claims from the United States before making a distribution.

8. As described in the Liquidator's reports, the Liquidator requested a waiver of federal priority claims from the United States Department of Justice ("DOJ") on January 27, 2012. After a series of communications, the Liquidator received a proposed Release Agreement from DOJ on February 20, 2013. The Liquidator signed the Release Agreement, which is subject to approval by the Court, and it has now been executed by the United States. (The executed Release Agreement is attached hereto as Exhibit A.) The Release Agreement releases the Liquidator and the USI Re estate from any and all liability under 31 U.S.C. § 3713(b) except for possible federal tax, fraud, criminal liabilities, and reimbursement liabilities and penalties arising under 42 U.S.C. § 1395y(b) (concerning potential Medicare reimbursement obligations). It also provides the United States with the right to inspect USI Re records prior to their destruction and a right to notice of any motion for approval of document destruction.

9. The Liquidator is not aware of any liability of USI Re to the United States or of any United States claim against USI Re. With respect to federal taxes (carved out of the Release Agreement), USI Re has never had any employees so there are no unpaid federal withholding and unemployment taxes. Federal income tax returns have been filed through 2011 and there are no reported federal tax liabilities. As of January 1, 2013, USI Re had approximately \$58 million in net operating losses to carry forward. With regard to Medicare, USI Re is a reinsurer that reinsurers other insurance companies. It does not make payments to claimants or medical providers, so it has no Medicare secondary payer or related reporting obligations. None of the

claims determined and approved in the USI Re liquidation provide for payment to an injured claimant or a medical provider.

10. In the circumstances, the Liquidator is of the view that the Release Agreement provides reasonable and sufficient protections for the Liquidator to make distributions from the estate of USI Re notwithstanding the federal priority statute. The Liquidator accordingly requests that the Release Agreement be approved by the Court.

11. On August 19, 2008, the Court entered an order establishing December 31, 2008, as the deadline for final submission or amendment of proofs of claim in the USI Re estate. All 292 proofs of claim in the USI Re estate have been determined and the Court has approved the Liquidator's recommendations. Since USI Re issued no insurance policies to policyholders, there are no allowed Class II (policy-related) claims under RSA 402-C:44. The claims of reinsured insurance companies and other general creditors of USI Re fall in the Class V (residual) priority class. The allowed Class V claims total \$52,721,425. Certain claims were filed late, and those claims were assigned to Class VIII. The allowed Class VIII claims total \$48,572. USI Re has claims totaling \$9,768,671 against certain of the Class V creditors, and these offsetting claims will be deducted from the creditors' allowed claim amounts.

12. As the claims have all been determined, and the United States has now agreed on the release agreement to address concerns over the federal priority statute, the Liquidator believes it is appropriate to apply for approval to distribute USI Re's assets to claimants with Class V priority claims. See RSA 402-C:46, I ("Under the direction of the court, the liquidator shall pay dividends in a manner that will assure the proper recognition of priorities and a reasonable balance between the expeditious completion of the liquidation and the protection of unliquidated and undetermined claims, including third party claims.").

13. Administrative expenses have been paid on an ongoing basis during the liquidation. The Liquidator estimates that expenses relating to distribution, disposal of records, tax returns and motions and closure of the USI Re estate (as well as incurred but unpaid administrative expenses) will total not more than \$100,000. The Liquidator proposes to establish a reserve in this amount.

14. As of February 28, 2013, the assets of the USI Re estate totaled \$6,243,100. After establishing the administrative expense reserve, the estimated assets of the USI Re estate available for distribution will total \$6,143,100. The Liquidator proposes to make a distribution of the \$6,143,100 to pay a pro rata dividend to Class V creditors based on the amounts of their respective allowed claims minus (1) any amount due USI Re from the creditor and (2) the \$50 deductible required by RSA 402-C:44.² The proposed distribution is intended to exhaust the remaining assets of the USI Re estate (less the administrative expense reserve), so any investment income earned or other cash received before the distribution will be added to the amount to be distributed. As described in paragraph 11 above, the Class V allowed claims total \$52,721,425 and offsetting claims of USI Re total \$9,768,671. The Liquidator accordingly estimates that the distribution will represent a payment of approximately 14.3% on the Class V creditors' allowed claims after offset ($\$6,143,100 \div [\$52,721,425 - \$9,768,671] = 14.3\%$). This estimate assumes that there will be no unexpected expenses or developments in closing the estate, and that investment results between March 1, 2013 and the date of distribution will not have a material effect. These factors, individually or combined, could result in a change in the distribution percentage.

² As the Class V claims will not be paid in full, Class VIII claims will receive no distribution. See RSA 402-C:44.

15. The Liquidator submits that the proposed distribution of USI Re assets will assure the proper recognition of priorities and will promote the expeditious completion of the USI Re liquidation in which there are no remaining undetermined claims. See RSA 402-C:46, I.

16. Following the final distribution of assets to creditors with Class V claims, the Liquidator will file a report with the Court and motions regarding closure of the USI Re estate. The matters addressed in these motions will include disposition and destruction of liquidation records, preparation and filing of final tax reports on USI Re's behalf, distribution of any remaining or unclaimed funds, and discharge of the liquidator.

Signed under the penalties of perjury this 12 day of March, 2013.

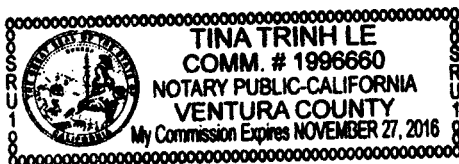
Peter A Bengelsdorf
Peter A. Bengelsdorf
Special Deputy Liquidator of The United States
International Reinsurance Company

STATE OF CALIFORNIA
COUNTY OF VENTURA

On 3/12, 2013 before me, Tina Le, Notary Public, personally appeared Peter A. Bengelsdorf, Special Deputy Liquidator of US International Reinsurance Company, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature Tina Le
Signature of Notary Public

RELEASE AGREEMENT

In order to permit a distribution of the assets of the estate of US International Reinsurance Company ("US Reinsurance"), pursuant to the orders of the State of New Hampshire Merrimack, SS. Superior Court ("Court"), this Release Agreement is being executed by the United States and Roger A. Sevigny, Insurance Commissioner of the State of New Hampshire and the Liquidator of US Reinsurance ("Liquidator").

I. PARTIES

The parties to this Release Agreement are the United States and the Liquidator (collectively, the "Parties").

II. RECITALS

1. The Parties do not intend this Release Agreement to release any possible claims the United States may have or may acquire against anyone for tax, fraud (including, but not limited to, securities and pension benefit fraud), criminal liabilities, or reimbursement liabilities and penalties arising under 42 U.S.C. § 1395y(b).

2. Except for the express terms of this Release Agreement, the Parties do not intend to create, enhance, diminish, defeat or otherwise affect such claims, if any, as the United States may have against the Liquidator or the US Reinsurance estate.

3. The Parties understand that this Release Agreement may be subject to the approval of the Court, which is supervising the liquidation of US Reinsurance.

4. The United States enters into this Release Agreement in reliance upon the representations of the Liquidator contained in his affidavits dated January 27, 2012, and January 30, 2013, attached as Exhibits A and B, respectively, to this Release Agreement ("Affidavits").

III. AGREEMENT

1. Except only for possible federal tax, fraud (including, but not limited to, securities and pension benefit fraud), criminal liabilities, or reimbursement liabilities and penalties arising under 42 U.S.C. § 1395y(b), the United States hereby releases and discharges the Liquidator and the estate of US Reinsurance from any and all liability under 31 U.S.C. § 3713(b) in connection with the US Reinsurance liquidation.

2. Under the terms of this Release Agreement, the United States or its duly authorized representative shall have the right, prior to the destruction of US Reinsurance's records in accordance with the orders of the Court, during normal business hours, on a date and at a location agreed upon by the Parties, to inspect, and if it wishes, to copy at its own expense, such documents, books, and records of the estate, and of the Liquidator, as shall be reasonably necessary to determine the existence and amount of claims the United States may have against the US Reinsurance estate, or to determine the Liquidator's compliance with the terms of this Release Agreement. No documents, books, or records of the estate or Liquidator may be destroyed unless notice is given to the United States of any motion filed with the Court requesting approval of the destruction. If the Liquidator does not request approval from the Court, he must obtain prior written authorization from the United States before destruction of any documents, books, or records of the estate or Liquidator.

3. Except for the express undertakings of the Liquidator and the United States in this Release Agreement, nothing in this Release Agreement shall be construed

(a) to establish or perfect any claims, substantive rights, or procedural rights of the United States;

(b) to limit, restrict, diminish, or defeat any claims, substantive rights, or procedural rights of the United States;

(c) to establish or perfect any objections or defenses, substantive rights, or procedural rights of the Liquidator; or

(d) to limit, restrict, diminish, or defeat any defenses, substantive rights, or procedural rights of the Liquidator.

4. The Parties agree that this Release Agreement shall not be effective unless and until it is approved by the Court, if approval is required, and the time for appeals of any such approval has expired. The Parties further agree to cooperate with each other in seeking prompt approval of this Release Agreement from the Court, including but not limited to making the necessary witnesses available for testimony considered necessary or appropriate to provide the Court with an adequate record upon which to approve this Release Agreement.

Dated: 2/28/13

SCC Williams
By: Sharon C. Williams
Trial Attorney
Civil Division
Department of Justice
Attorney for the United States

Dated: 2-25-13

RAS
By: Roger A. Sevigny
Liquidator of US International Reinsurance
Company

STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

Docket No. 03-E-0112

**In the Matter of the Liquidation of
US International Reinsurance Company**

LIQUIDATOR'S AFFIDAVIT

I, Roger A. Sevigny, hereby depose and say:

1. I am the Insurance Commissioner of the State of New Hampshire and the Liquidator ("Liquidator") of US International Reinsurance Company ("USI Re").
2. I submit this Affidavit in support of my request for a release from the United States of America ("United States") from liability under 31 U.S.C. § 3713(b) with respect to the distribution of assets of USI Re to its creditors pursuant to order of the New Hampshire court supervising the USI Re liquidation proceeding.
3. The facts and information set forth below are either within my knowledge gained through my involvement with this matter, in which case I confirm that they are true, or are based on information provided to me by others, in which case they are true to the best of my knowledge, information and belief.
4. USI Re is an insurance company incorporated under the laws of the State of New Hampshire licensed and regulated by the New Hampshire Insurance Department. USI Re is an indirect, wholly-owned subsidiary of The Home Insurance Company ("Home") through US International Re, Inc., an intermediate holding company. USI Re has no subsidiaries. USI Re was incorporated as The Home Reinsurance Company in 1979; it changed its name to US International Reinsurance Company in 1987. For the period of its operation, USI Re's principal offices were located at 59 Maiden Lane, New York, New York 10038, and its statutory offices

were located at 286 Commercial Street, Manchester, New Hampshire 03101. It presently has an office at 61 Broadway, New York, New York 10006.

5. USI Re wrote only reinsurance. It did not issue insurance policies to policyholders but only reinsured other insurance companies under treaty and facultative contracts of reinsurance. It began assuming reinsurance business as of January 1, 1983, and it stopped writing new business and went into run-off in 1990.

6. USI Re was placed in rehabilitation by order of the Merrimack County Superior Court ("Court") on March 12, 2003, shortly after Home was placed in rehabilitation on March 5, 2003. (In 1995, USI Re was reinsured by Home pursuant to a 100% quota share agreement; its financial condition was thereafter in great part dependent on that of Home.) The Commissioner as Rehabilitator moved to place both companies in liquidation, and on June 13, 2003, the Court issued orders declaring both USI Re and Home insolvent, appointing the Commissioner as Liquidator, and directing that the companies be liquidated. A copy of the Order of Liquidation for USI Re is attached as Exhibit A.

7. Notice of entry of the Order of Liquidation was provided to persons known or reasonably expected to have claims against USI Re. Each notice included notice of the claim filing deadline, June 13, 2004. On August 19, 2008, the Court entered an order establishing December 31, 2008 as the deadline for final submission or amendment of proofs of claim. Notice of the claim amendment deadline was given to claimants who had filed a proof of claim and cedents who had submitted a claim in the ordinary course of business during the liquidation.

8. As USI Re did not write direct insurance, there is no guaranty fund involvement in the USI Re liquidation since they do not cover reinsurance-related obligations.

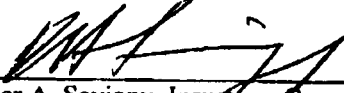
9. The Liquidator received a total of 292 proofs of claim. All 292 proofs of claim have been determined and the Court has approved the claim recommendations. The allowed claims total \$52,769,997 consisting of \$52,721,425 in Class V and \$48,572 in Class VIII. Since USI Re has no policyholders, there are no Class II (policy-related) claims. The claims of reinsured insurance companies fall in the Class V (residual) priority class. Certain Class V creditors are also debtors of USI Re, and their allowed claims will be or have been offset against their obligations to USI Re. After that adjustment, the allowed Class V claims eligible to receive a distribution total \$43,001,326.

10. USI Re's assets in my possession as of September 30, 2011 were \$6,221,496. After receipt of the requested federal waiver, I will request the supervising Court's approval of a pro rata distribution of the assets, after payment of remaining administrative expenses, to the Class V creditors of USI Re. As there are insufficient assets to satisfy the allowed Class V claims, the subordinated Class VIII claims will not receive a distribution. See N.H. RSA 402-C:44.

11. USI Re has never had any employees (it was operated by employees of Home or Risk Management Enterprises Limited), so there are no federal withholding or unemployment tax issues. Federal income tax returns have been filed on a consolidated basis with Home for years through 2010, and there are no reported tax liabilities. USI Re has approximately \$58 million in net operating loss to carry forward on a stand alone basis.

12. I have no knowledge of any claims by the United States against USI Re, its New Hampshire estate or myself, as Liquidator.

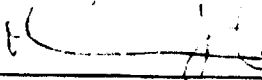
Signed under the pains and penalties of perjury this 17th day of JANUARY, 2012.



Roger A. Sevigny, Insurance Commissioner of the State of
New Hampshire, as Liquidator of US International
Reinsurance Company

STATE OF NEW HAMPSHIRE
COUNTY OF MERRIMACK

Subscribed and sworn to, before me, this 17 day of JANUARY, 2012.



Notary Public/Justice of the Peace

Chiara Dolcino
My Commission Expires 10/1/13

STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

Docket No. 03-E-0112

**In the Matter of the Liquidation of
US International Reinsurance Company**

LIQUIDATOR'S AFFIDAVIT

I, Roger A. Sevigny, hereby depose and say:

1. I am the Insurance Commissioner of the State of New Hampshire and the Liquidator ("Liquidator") of US International Reinsurance Company ("USI Re").
2. I submit this Affidavit in support of my request for a release from the United States of America ("United States") from liability under 31 U.S.C. § 3713(b) with respect to the distribution of assets of USI Re to its creditors pursuant to order of the New Hampshire court supervising the USI Re liquidation proceeding and in response to the questions presented in the attached January 24, 2013 letter from the U.S. Department of Justice ("DOJ Letter").
3. The facts and information set forth below are either within my knowledge gained through my involvement with this matter, in which case I confirm that they are true, or are based on information provided to me by others, in which case they are true to the best of my knowledge, information and belief.
4. Two initial questions are presented in the DOJ Letter: "(1) Did US International re-insure insurance companies that issued tort liability policies? (2) Did US International re-insure insurance companies that issued policies that included coverage for medical expenses?"
5. The answer to both questions restated in Paragraph 4 of this affidavit is "Yes".
USI Re reinsured insurance companies with respect to exposures under liability insurance

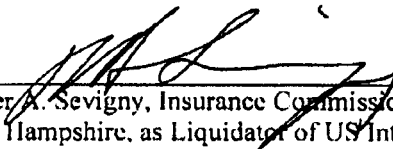
policies. USI Re reinsured insurance companies with respect to losses arising under liability insurance policies due to the medical expenses of claimants.

6. The DOJ Letter then asks, if the answer to either of the two initial questions is “Yes”, whether “US International reimburse[d] the insurance company or the injured claimant (or representative of the injured claimant)?”

7. USI Re was ordered to be liquidated June 13, 2003, years before 42 U.S.C. § 1395y(b) was enacted or became effective. USI Re has paid no claimants, including any “injured claimant (or representative of the injured claimant)”, anything since June 13, 2003. As reported in Paragraph 9 of my January 27, 2012 affidavit, all claims against USI Re have been determined by the Liquidator and the supervising court has approved each of those determinations. None of those judicially approved determinations provide for a payment to an “injured claimant (or representative of the injured claimant).” Therefore, no payments have been or will be made by the Liquidator to any “injured claimant (or representative of the injured claimant).” Instead, payments will be made to the reinsured insurance companies.

8. The DOJ Letter presents four additional questions to be answered “[i]f US International reimbursed the injured claimant (or representative of the injured claimant)”. Since the Liquidator has not and will not reimburse any “injured claimant (or representative of the injured claimant)”, those four additional questions need not be answered.

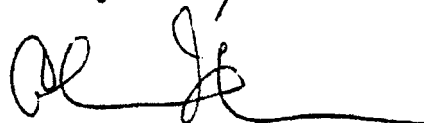
Signed under the pains and penalties of perjury this 30th day of JANUARY, 2013.



Roger A. Sevigny, Insurance Commissioner of the State of
New Hampshire, as Liquidator of US International
Reinsurance Company

STATE OF NEW HAMPSHIRE
COUNTY OF MERRIMACK

Subscribed and sworn to, before me, this 31st day of January, 2013.



Notary Public/Justice of the Peace

Clara Dolino
My Commission Expires 10/6/13



U.S. Department of Justice
Civil Division

Regular Mail:
P.O. Box 875
Ben Franklin Station
Washington, D.C. 20044-0875

Express Delivery:
1100 L Street, N.W.
Room 10016
Washington, DC 20005



Sharon C. Williams
Trial Attorney
D.J. No. 77-47-392

Tel.: (202) 353-0530 Facsimile: (202) 307-0494
Email: sharon.williams@usdoj.gov

January 24, 2012

J. David Leslie
Rackemann, Sawyer & Brewster, PC
160 Federal Street
Boston, MA 02110

Re: US International Reinsurance Company

Dear Mr. Leslie:

You requested a release of claims that the United States may have against the Liquidator of US International Reinsurance Company ("US International") arising under the Federal Priority Statute, 31 U.S.C. § 3713. Although we have completed our search for United States claims against US International, we are unable to sign a release until we receive a supplemental affidavit confirming that US International has complied with both its Medicare liability and reporting requirements.

As you know, the Medicare Secondary Payer Statute, 42 U.S.C. § 1395y(b), requires primary plans to reimburse the Medicare Trust Fund for conditional payments made on behalf of Medicare beneficiaries and imposes reporting requirements on insurers. MMSEA Section 111, Medicare Secondary Payer Mandatory Reporting, Liability Insurance (Including Self-Insurance), No-Fault Insurance, and Workers' Compensation User Guide, in Chapter III: Policy Guidance, Section 6.1.3 Deductible Issues vs. Re-insurance, Stop Loss Insurance, Excess Insurance, Umbrella Insurance, *etc.* states that:

- For re-insurance, stop loss insurance, excess insurance, umbrella insurance, guaranty funds, patient compensation funds, *etc.* which have responsibility beyond a certain limit, the key in determining whether or not reporting for 42 U.S.C. 1395y(b)(8) is required for these situations is whether or not the payment is to the injured claimant/representative of the injured claimant vs. payment to the self-insured entity to reimburse the self-insured entity. Where payment is being made to reimburse the self-insured entity, the self-insured entity is the RRE for purposes of a settlement, judgment, award, or other payment to or on behalf of the injured party and no reporting is required by the insurer reimbursing the self-insured entity. If the insurer payment is being made to reimburse the

injured claimant (or representative of the injured claimant), the insurer is the RRE and reporting by the insurer is required.

Accordingly, please forward an affidavit that answers the following questions:

- 1) Did US International re-insure insurance companies that issued tort liability policies?
- 2) Did US International re-insure insurance companies that issued policies that included coverage for medical expenses?

If the answer to either question is yes, for claims filed against policies issued by the insurance company, did US International reimburse the insurance company or the injured claimant (or representative of the injured claimant)? If US International reimbursed the injured claimant (or representative of the injured claimant):

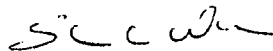
- Please state the procedures followed to determine whether the recipients of payments on those policies were 65 years of age or older, disabled, or otherwise entitled to benefits under the Medicare program.

- Please state the procedures followed by the Liquidator to ascertain if payments made pursuant to those policies related to items or services paid for by the Medicare program.

- If Medicare payments were found, please identify the efforts the Liquidator made to resolve Medicare's claims, and also, identify the procedures the Liquidator followed to report the Medicare claims and the payments.

- Please state in the Affidavit whether the Liquidator has fully complied with all reporting requirements of 42 U.S.C. § 1395y(b)(7) and (8), and all program instructions issued thereunder (presently found at <http://www.cms.gov/MandatoryInsRep/>). Also, please state whether the Liquidator has reimbursed the United States pursuant to 42 U.S.C. § 1395y(b)(2)(B) for all Medicare payments that were made for items and services on behalf of Medicare beneficiaries whose medical care should have been paid for by the insurance company or reinsurance company or whose medical care was, or should have been, paid for pursuant to policies issued by the insurance company.

Very truly yours,



Sharon C. Williams