

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO

GEORGE FABE, :  
Superintendent State of Ohio :  
Department of Insurance as :  
Liquidator of The Oil & Gas :  
Insurance Company, :

Plaintiff, :

v. : Case No. 90CVH05-3409

THE OIL & GAS INSURANCE :  
COMPANY, :

Defendant, :

Judge McGrath

FILED  
COMMON PLEAS COURT  
FRANKLIN CO., OHIO  
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THOMAS J. ENRIGHT  
CLERK OF COURTS

LIQUIDATOR'S MOTION FOR FINDING OF MERGER

The Superintendent of the Ohio Department of Insurance, acting in his capacity as liquidator of The Oil & Gas Insurance Company (the "Liquidator"), hereby moves this Court, pursuant to Section 3903.21 of the Ohio Revised Code, for an Order finding (1) that both The Burt Syndicate, Inc. ("Burt"), and The First New York Syndicate Corporation ("FNY"), two former members of the New York Insurance Exchange, merged with OGICO in February, 1990, and (2) that in light of such mergers, the Liquidator is authorized and should now proceed to marshall the assets of Burt and FNY, with such assets to be deposited and become a part of the general assets of the overall OGICO estate. The Liquidator also request that this Court extend the deadline for submitting proofs of claim until October 1, 1993, so that claimants and creditors of Burt and FNY have the opportunity to present their claims in the OGICO liquidation. The grounds for this motion are more

particularly set forth in the attached Memorandum in Support of Motion.

Respectfully submitted,

LEE I. FISHER  
ATTORNEY GENERAL STATE OF OHIO

BY: EMENS, KEGLER, BROWN,  
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**MEMORANDUM IN SUPPORT OF LIQUIDATOR'S  
MOTION FOR FINDING OF MERGER**

**I. OVERVIEW**

On May 16, 1990 this Court placed The Oil & Gas Insurance Company ("OGICO") into rehabilitation under Ohio Revised Code Chapter 3903, and appointed the Ohio Superintendent of Insurance as rehabilitator. Upon appointment as rehabilitator, the Ohio Superintendent of Insurance assumed all the powers of the former directors and officers of OGICO, whose authority was suspended by the rehabilitation order. See, Ohio Revised Code §3903.14.

On August 31, 1990, this Court placed OGICO into liquidation, and appointed the Ohio Superintendent of Insurance as the liquidator of OGICO (the "Liquidator"). Accordingly, pursuant to Ohio Revised Code §3903.18, the Liquidator was directed to marshal the assets of OGICO for ultimate distribution pursuant to Chapter 3903.

During the process of marshalling the assets and identifying the potential liabilities of the OGICO estate, the Liquidator has determined that prior to being placed into rehabilitation, OGICO entered into two merger agreements with former members of the New York Insurance Exchange. In each case, the directors of OGICO approved the acquisition of a New York reinsurance company licensed to write business on the New York Insurance Exchange.

In the first instance, OGICO and The Burt Syndicate, Inc. ("Burt") entered into a Stock Purchase Agreement and a Plan of Merger whereby OGICO acquired all shares of Burt, and then was to merge with Burt with OGICO becoming the surviving corporation. The

Stock Purchase Agreement and the Plan of Merger were approved by the board of directors of both Burt and OGICO, as well as the shareholders of Burt. The merger was ultimately approved by both the Ohio and New York Departments of Insurance, in addition to the Board of Governors for the New York Insurance Exchange. Moreover, after the execution of the Plan of Merger, and the approval of the same by its board of directors, OGICO treated all assets and liabilities of Burt as its own.

Notwithstanding all the steps taken by the officers and directors of OGICO to consummate the merger with Burt, there were a few formalities which were not completed by the time OGICO was placed into rehabilitation. In particular, a Certificate of Merger was never filed with the New York Secretary of State's Office. Also, no approval of the merger was obtained from the New York Tax Commissioner. Both of these steps were requisites for a legal merger under New York law.

In a similar manner, OGICO and the First New York Syndicate Corporation ("FNY") entered into a Stock Purchase Agreement and a Plan of Merger, whereby OGICO was to merge with FNY. The Plan of Merger was approved by the necessary directors of both corporations, and the Ohio Department of Insurance. However, as was with the case of the Burt merger, the FNY merger was not yet complete at the time OGICO was placed into rehabilitation. Notwithstanding their failure to complete all the formalities for a legal merger, however, OGICO treated assets of FNY as assets of OGICO immediately after the Stock Purchase Agreement and the Plan

of Merger were executed.

After reviewing all the documents and information available to him, the Liquidator has determined that it is in the best interest of the OGICO estate to treat both Burt and FNY as merged with OGICO. Both transactions had progressed to such a state at the time of OGICO's rehabilitation, that attempting to unwind the mergers now is unrealistic, if not impossible. The assets and liabilities of the former syndicates were treated as assets and liabilities of OGICO since the time the merger documents were executed, which was prior to the time OGICO was placed into rehabilitation. Moreover, even if the mergers could be unwound, the OGICO estate would still be subject to claims from creditors of Burt and FNY that de facto mergers occurred. Under such circumstances, the OGICO estate may be found responsible for liabilities of Burt and FNY, even if the Liquidator were to undo the mergers.

Finally, the Liquidator remains the only regulatory authority in a position to wind-up the affairs of the two former syndicates. The New York Insurance Exchange no longer recognizes either Burt or FNY as members of the Exchange, or as separate legal entities. Rather, the Exchange views both entities as having merged with OGICO. Similarly, the New York Superintendent of Insurance (the agency responsible for the regulation of FNY and Burt when they existed as separate legal entities) has taken the position that because of the merger transactions between OGICO and Burt, and OGICO and FNY, the Liquidator is the proper authority to oversee

the administration of these two estates.

Accordingly, the Liquidator asks this Court to find that a de facto merger occurred between both OGICO and Burt, and OGICO and FNY. The Liquidator further seeks this Court's approval to:

- (1) take such steps as are, in his discretion, reasonably available to consummate the mergers between OGICO and Burt, and OGICO and FNY;
- (2) pursuant to Chapter 3903 of the Ohio Revised Code, liquidate Burt and FNY as part of the OGICO liquidation, and thereby treat assets owned by Burt and FNY as assets of the OGICO estate, and liabilities owed by Burt and FNY as liabilities of the OGICO estate; and
- (3) extend the deadline for filing proofs of claim for creditors and claimants of Burt and FNY until October 1, 1993 ("Bar Date");
- (4) notify such creditors and claimants of the liquidation and Bar Date in accordance with Chapter 3903 of the Ohio Revised Code.

These steps are consistent with the intent and actions of the underlying parties prior to the OGICO rehabilitation order, acceptable to the New York Department of Insurance, and in the best interest of the OGICO Estate. Moreover, these steps will allow the Liquidator to carry out his responsibilities set forth in this Court's Liquidation Order of August 31, 1990, and move forward with the liquidation of OGICO.

## II. STATEMENT OF FACTS

### A. The New York Insurance Exchange

The New York Insurance Exchange ("NYIE") was created by the New York General Assembly in the early 1980's to provide a facility whereby insurance companies could underwrite all types of reinsurance, and certain types of direct insurance. The underwriting business permitted on the NYIE was generally of a more risk-intensive nature than that permitted by other companies regulated directly by the New York Department of Insurance. While the NYIE was ultimately regulated by the New York Superintendent of Insurance, the NYIE also had its own constitution and bylaws which set forth conditions for membership on the exchange, both permissible and prohibited conduct, provisions for the creation of a security fund for the NYIE, and provisions for a member's withdrawal from the exchange.

The NYIE had approximately 50 members by the mid-1980's.<sup>1</sup>

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<sup>1</sup>To give the Court a broader understanding of the nature and history of the NYIE and its members, as well as the background under which the merger transactions took place, this Memorandum contains a number of facts which do not directly bear upon the issue of whether a de facto merger occurred between OGICO and the two former syndicates. These facts are set forth in the 324 page transcript of a statement of Lockwood Burt. Mr. Burt is a principal of Ormand Re Group, Inc. and W. J. Burt Management which was involved in the management of several members of the NYIE, including both Burt and FNY. Mr. Burt's statement was taken on June 27 and 28, 1990 by counsel for the Liquidator as part of the OGICO liquidation process.

Because these facts only provide the context for the Liquidator's Motion for Finding of Merger, and not actual support for a finding of a de facto merger, the transcript of Mr. Burt's statement has not been attached as an exhibit to this Memorandum. However, a copy of the transcript is available for the Court's review.

However, almost from the very beginning the NYIE was a financial disaster. Estimates of the total underwriting losses for all 50 members of the NYIE between 1980 and 1984 were placed at approximately one billion dollars. Accordingly, the New York Superintendent of Insurance began taking steps in 1985 to address the financial problems of the NYIE, including the liquidation of those members which were insolvent.

**B. The Burt Syndicate, Inc.**

Burt was incorporated in New York in February, 1982 and began writing business as a member of the NYIE in April, 1982. (Burt Transcript, p. 130). The sole shareholder of Burt was Ormond Re Group, Inc., a corporation organized under the laws of Florida. (Burt Transcript, p. 130).

Problems with Burt's business developed almost immediately from poor underwriting and uncollectible reinsurance recoverables. Burt's problems were further exacerbated when four of Burt's primary reinsurers were declared insolvent. (Burt Transcript, p. 131-132). As a result of these problems, all of Burt's business was cancelled by July 1, 1984. (Burt Transcript, p. 131).

In August, 1986, the NYIE Board of Governors declared Burt insolvent. In November, 1986, the New York Superintendent of Insurance filed a motion seeking an order to show cause as to why Burt should not be liquidated. (Burt Transcript, p.132). Burt opposed this action on the grounds that it was not insolvent. In particular, Burt disagreed with the New York Superintendent of Insurance's definition of insolvency. (Burt Transcript, p. 132).

Burt argued that as long as its assets were greater than its liabilities, it was a solvent corporation. The New York Superintendent of Insurance, on the other hand, took the position that New York law required a member of the NYIE to have a surplus of \$2.2 million to be in a condition of solvency.

Prior to a ruling on this issue by a New York court, however, the owners of Burt devised a rehabilitation plan which involved the commutation of the vast majority of Burt's liabilities. The plan provided for payment of approximately \$20 million dollars to Burt's creditors and the purchase of reinsurance to cover the remaining non-commuted business. (Burt Transcript, p. 133). The plan was accepted by over 90% of Burt's creditors, and was approved by the New York Supreme Court in August, 1988. Accordingly, the Burt liquidation proceeding was dismissed on December 19, 1988. (Burt Transcript, p. 134).

Notwithstanding the overall acceptance of the rehabilitation plan by the creditors of Burt and the New York Supreme Court, the New York Superintendent of Insurance appealed the court's decision dismissing the Burt liquidation proceeding. The New York Superintendent of Insurance was not satisfied with the rehabilitation plan in that it did not bring Burt's capital surplus up to \$2.2 million -- the New York Superintendent of Insurance's definition of solvency under New York law. Accordingly, the owners of Burt were left with three options -- (1) contest the appeal; (2) infuse additional capital into Burt such that Burt's capital surplus was at least \$2.2 million; or (3)

sell Burt to a licensed New York insurance company which would be acceptable to the New York Department of Insurance. (Burt Transcript, p. 134).

Selecting the third option, Burt negotiated a deal with the president of OGICO in August, 1989, which contemplated a purchase of Burt's stock by OGICO followed by a merger of OGICO and Burt. (Burt Transcript, p. 135). On September 29, 1989, Burt, Ormond Re and OGICO entered into a Stock Purchase Agreement whereby OGICO was to purchase the common stock of Burt for the sum of \$500,000. A copy of this agreement is attached hereto as Exhibit A.

On or around December 15, 1989, both the Board of Directors of OGICO and Burt approved the Plan of Merger. Specifically, on December 11, 1989 the Board of Directors of OGICO approved the Plan of Merger whereby Burt was to transfer all of its assets and liabilities to OGICO. The Board of Directors of Burt approved the Plan of Merger on December 15, 1989. The Plan of Merger was also accepted by the sole shareholder of Burt, Ormond Re. These documents have been attached hereto as Exhibit B.

On October 18, 1989, Gary Kratzer, Vice President and Secretary of the NYIE, provided confirmation to Miriam Boggio, Deputy Superintendent, of the New York Department of Insurance, that the NYIE did not disapprove of the Stock Purchase Agreement and further believed that the Agreement complied with all applicable rules and laws. Also, by letter dated December 14, 1989, Kurt Weiland, attorney for the Ohio Department of Insurance notified the New York Department that the Ohio Department had

"acquiesced in the transaction and does not interpose any objection." A copy of this correspondence has been attached hereto as Exhibit C.

On December 29, 1989, Miriam A. Boggio, Deputy Superintendent of the New York Department of Insurance, certified that the Plan of Merger executed on behalf of OGICO was approved by the New York Department of Insurance. A copy of this certificate is attached hereto as Exhibit D. Pursuant to the merger, Burt assigned to OGICO its beneficial interests to a certain Trust Agreement dated December 2, 1988 with Forum Re as grantor and the Bank of New York as trustee. The Assignment is dated December 27, 1989 and the Consent to Assignment was executed by Forum Re on February 13, 1990 and The Bank of New York on April 23, 1990. A copy of the Assignment and Consent are attached hereto as Exhibit E.

Moreover Ormond Re and OGICO entered into a Service Agreement, effective October 1989, to facilitate the continued run-off of Burt's business. Ormond Re was to pursue commutation on behalf of OGICO of all outstanding former liabilities of Burt and was authorized to pay up to 80% of known liabilities. A copy of this Service Agreement is Attached as Exhibit F. Through Ormond Re, OGICO conducted the business of what was formerly Burt.

The only requisites for a legal merger under New York law which were not completed were obtaining the New York Tax Commissioner's approval of the merger, and the filing of the Certificate of Merger with the New York Secretary of State's office. It appears that the New York Tax Commissioner's approval

was contemplated by in-house counsel for OGICO, but there is no evidence that such approval was ever obtained.

**C. The First New York Syndicate Corporation**

FNY was incorporated in New York in April, 1979, and began writing business as an underwriting member of the New York Insurance Exchange ("NYIE") in March, 1980. (Burt Transcript, p. 10). The shareholders of FNY consisted of the following insurance companies:

- 1) Mutual Fire Marine and Inland Insurance Company
- 2) Philadelphia Manufacturers Mutual (later to become Arkwright Mutual Insurance Company)
- 3) Ormond Re Insurance Company
- 4) Hamburg International Insurance Company (later to be acquired by Capital Assurance Company of Miami)
- 5) Pohjola Insurance Company Limited
- 6) Nouvelle Compagnie de Reassurances
- 7) Pearl Assurance Public Limited Co.; and
- 8) Gjensidige Norsk Skadeforskring

(Burt Transcript, p. 8). Each insurance company made an initial capital contribution of \$575,000 to start FNY. W.J. Burt Management was hired to be the underwriting manager for FNY. (Burt Transcript, p. 10). FNY wrote business through 1984.

In 1985, the New York Superintendent of Insurance ordered an investigation concerning the financial condition of FNY. Brief for James P. Corcoran as Superintendent of Insurance of the State of New York, Appellant, Matter of Application of Corcoran For

Order To Take Possession of and Liquidate First New York Syndicate, Inc., Oct. 31, 1989 at 4 (hereinafter referred to as "Brief at \_\_\_"). A Report on Examination, which was issued April 4, 1985, determined that:

. . . [FNY] is insolvent in the amount of \$2,516,293, its capital impaired in the amount of \$3,666,293 and its required minimum surplus to policyholders is impaired in the amount of \$4,716,293.

Brief at 4.

On approximately April 15, 1986, the New York Superintendent of Insurance advised FNY in writing of the finding of insolvency and impairment and directed FNY to eliminate such impairment by May 14, 1986. Brief at 5. On October 31, 1986, after FNY failed to cure the impairment, the New York Superintendent of Insurance filed a special proceeding in the New York Supreme Court, New York County, to take possession and liquidate the business of FNY. Brief at 6.

In an attempt to stave off liquidation, the owners of FNY devised a Rehabilitation Plan (the "Plan") which involved the commutation of the vast majority of FNY's liabilities. Pursuant to the Plan, FNY was to pay out approximately \$40 million to relieve FNY of virtually all of its liabilities. Estimates at that time placed FNY's total liabilities at approximately \$125 million. (Burt Transcript, p. 12-13). The Plan was accepted by more than 90% of FNY's creditors. (Burt Transcript, p. 13). The Plan was ultimately approved and the Superintendent's motion for an Order to take possession of and liquidate FNY was adjourned by Judge Kirschenbaum of the Supreme Court, New York County, on May 17,

1988. Judge Kirschenbaum's Order adjourned the Superintendent's motion until December 15, 1988, permitting FNY, in the interim, to execute the various commutation agreements set forth in the Plan.

Under the Plan, FNY was to be restored:

to a condition of solvency with a surplus of not less than \$1,134,000.000, and [ensure that FNY was] capable of continuing as a [sic] on-going company by virtue of its having sufficient capital and surplus to do insurance and/or reinsurance business. . .

Matter of the Application of Corcoran to Take Possession and Liquidate First New York Syndicate Corp., No. 46341/86 (N.Y. Sup. Ct. May 17, 1988) (order adjourning motion to liquidate) at 4.

The New York Superintendent of Insurance opposed the Plan and did not consent to Judge Kirschenbaum's Order. In the Superintendent's opinion, like Burt, FNY needed to satisfy a \$2.2 million minimum surplus requirement imposed by the NYIE. Brief, at 7. Despite this objection, on December 29, 1988, Judge Kirschenbaum, finding that FNY "had been restored to a condition of solvency with a surplus of not less than \$1,134,000 . . . , " dismissed the liquidation proceeding. Matter of the Application of Corcoran to Take Possession and Liquidate First New York Syndicate Corp., No. 46341/86 (N.Y. Sup. Ct. Dec. 29, 1988) (order dismissing Application of Superintendent, with prejudice) at 2.

On October 31, 1989, the New York Superintendent of Insurance filed a brief appealing the Order of Dismissal. Brief, at 8. Such actions by the New York Superintendent of Insurance left the owners of FNY with the same three alternatives which were available to the owners of Burt: (1) contest the appeal; (2) infuse additional

capital into FNY such that its capital surplus was at least 2.2 million; or (3) find a New York licensed insurance company to purchase FNY. (Burt Transcript, p. 19 - 22).

Accordingly, during the fall of 1989, the owners of FNY entered into negotiations with OGICO for FNY's acquisition by and merger with OGICO. On November 16, 1989, FNY informed the New York Superintendent of Insurance that the shareholders of FNY had accepted an offer for the acquisition of FNY by OGICO, and outlined the terms of the offer. See, Nov. 16, 1989 letter to Miriam Boggio from Steven Honigman, counsel of record for FNY, attached hereto as Exhibit G. The New York Superintendent of Insurance informed FNY that the New York Department of Insurance would not pursue the pending appeal if the OGICO-FNY transaction proceeded as planned. OGICO-FNY Stock Purchase Agreement, Schedule 3.05; Jan. 23, 1990 letter to Paul Collins of OGICO from Joan Siegel, State of New York Insurance Department attached hereto as Exhibit H.

A series of documents, with December 31, 1989 effective dates, were executed on or about February 27, 1990 to effectuate the OGICO-FNY merger. First, six FNY shareholders which were also FNY's retrocessionaires, entered into a Reinsurance Commutation and Release Agreement under which the six shareholders were to pay \$6,372,567.66 to FNY to commute their liabilities on the outstanding approved claims, losses and IBNR. A copy of the Reinsurance Commutation and Release Agreement has been attached hereto as Exhibit I. Second, a Stock Purchase Agreement was entered into between OGICO and FNY's eight shareholders. The Stock

Purchase Agreement was executed by all but one shareholder, Mutual Fire, Marine and Inland Insurance Company ("Mutual Fire"), on February 27, 1990. The Stock Purchase Agreement provided that OGICO would purchase the shares of each shareholder for \$100,000, for an aggregate purchase price of \$800,000. A copy of the Stock Purchase Agreement has been attached hereto as Exhibit J. Finally, OGICO and FNY entered into a Plan of Merger pursuant to which FNY (OGICO's subsidiary) would merge into OGICO (the surviving entity). The Plan of Merger has been attached hereto as Exhibit K.

The merger was approved by the entire FNY board of directors. See, Board Resolution, dated Feb. 27, 1990 attached hereto as Exhibit L. In addition, documents certifying that both the FNY and OGICO boards of directors had adopted the Plan of Merger, pursuant to and in accordance with Ohio Revised Code §1701.81 and §907 N.Y. Bus. Corp. Law, were executed on February 27, 1990. A certification of the consent of FNY shareholders to the merger was executed February 27, 1990. Copies of these documents have been attached hereto as Exhibit M.

After receiving the details of the OGICO-FNY merger plan, the Ohio Department of Insurance gave its written acquiescence to the merger plan to the New York State Insurance Department, i.e., "The Department has acquiesced in the transaction and does not interpose any objection." See, Feb. 2, 1990 letter from Mary Jo Hudson to JoAnne Brazenor attached hereto as Exhibit N.

On February 27, FNY forwarded the sum of \$6,372,567.66 (the funds it received from its six shareholders/retrocessionaires as

part of the Reinsurance Commutation and Release Agreement) to OGICO, to be held in escrow until the merger closing. On the same date, OGICO transferred \$700,000 out of the \$6,372,567.66 to seven of FNY's shareholders (all but Mutual Fire) pursuant to the Stock Purchase Agreement. Of the remaining \$5,672,567.66, OGICO distributed \$4,700,000.00 to OGICO related entities and retained the balance of \$972,567.66 in its own account.

As of the February 27, 1990 closing date, the New York Insurance Department had not issued its approval of the merger plan.<sup>2</sup> On March 7, 1990, the New York Superintendent of Insurance approved the Plan of Merger as submitted to the Department on January 30, 1990, but stated that it would need the following information prior to rendering final approval of the merger:

1. An updated (Dec. 1, 1989) balance sheet for OGICO;
2. Confirmation by the Pennsylvania Rehabilitator that he did not object to the sale by Mutual Fire of its FNY stock;
3. Executed originals of all merger documents;
4. Compliance with §7104 and §7105 of N.Y.I.L.
5. March 7, 1990 letter to Steven Honigman, counsel of record for FNY from Kenneth Kaufman.

OGICO's purchase of FNY shareholder Mutual Fire's stock was

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<sup>2</sup> The NYIE did issue a statement that it had "determined not to invoke its authority to disapprove" of the transaction. Feb. 23, 1990 letter to Steven Honigman, counsel of record for FNY, from Gary Kratzer, attached as Exhibit O. The NYIE Security Fund later stated that it had no objection to the proposed merger transaction. March 1, 1990 letter to Steven Honigman, counsel of record for FNY, from Thomas Parry, attached as Exhibit P.

never consummated. At the time of the Stock Purchase Agreement closing (February 27, 1990), Mutual Fire was in Rehabilitation in Pennsylvania, and its shares could be delivered to OGICO (and \$100,000 transferred to Mutual Fire) only after court approval. While ultimately the Commonwealth Court of Pennsylvania authorized the Rehabilitator to sell the FNY stock [Grode v. The Mutual Fire, Marine & Inland Insurance Company, No. 3483 C.D. 1986 (Pa. Commw. Ct. April 30, 1990)], on May 16, 1990, OGICO was ordered into rehabilitation, limiting its ability to initiate the transfer of funds.

While the New York Insurance Department could not give retroactive final approval of the merger prior to OGICO being placed into rehabilitation, the New York Department of Insurance did agree after OGICO was placed into rehabilitation that it would not challenge the merger between OGICO and FNY. In a letter dated April 27, 1992, from Miriam A. Boggio, Deputy Superintendent of the New York Department of Insurance, to John Brody, counsel for the Liquidator, the New York Superintendent of Insurance took the following position:

In connection with the points raised above, the Superintendent will not seek to void, rescind, set aside or otherwise challenge any commutation, release, agreement, disposition of assets or other transactions to which FNY has been a party.

. . . .

Consequently, the future administration and liquidation of the assets and liabilities of FNY shall be administered by the Liquidator and the Ohio courts, all as provided by the Ohio Revised Code.

A copy of this letter has been attached hereto as Exhibit Q.

Without final approval from the New York Insurance Department, a certificate of merger could not be filed with the New York Department of State. Also, it does not appear that the New York State Tax Commissioner approved the merger between OGICO and FNY. Similarly, no certificate of merger for the OGICO-FNY transaction was filed with the Ohio Secretary of State's Office.

### **III. ARGUMENT**

#### **A. Legal Mergers Under New York and Ohio Law**

Where two corporations organized under the laws of different jurisdictions merge, corporate laws of both jurisdictions must be satisfied to consummate the merger. Krull v. Celotex Corp., 611 F. Supp. 146 (N.D. Ill. 1985). Therefore, both New York law and Ohio law should be satisfied for either OGICO and Burt or OGICO and FNY to merge.

To effectuate a legal merger under the laws of Ohio the following steps must be completed:

- (1) The agreement of merger must contain the following provisions:
  - (a) The states under the laws of which each constituent corporation exists;
  - (b) That one or more specified corporations shall be merged;
  - (c) The designation and number of outstanding shares of each constituent subsidiary corporation and surviving corporation;
  - (d) The terms of merger, the mode of carrying them into effect and the manner and basis of making distributions for shareholders; and
  - (e) All statements and matters required to be set forth in such an agreement of merger by the laws of the state under which such corporation exists; and the effective date of merger.

- (2) The merger agreement must be approved by the directors of each constituent corporation, but it need not be adopted by the shareholders of any constituent domestic corporation.
- (3) If any constituent corporation is a foreign corporation, the agreement must be approved as required by the laws of the state under the laws of which such constituent corporation exists.
- (4) Upon adoption by each constituent corporation of an agreement of merger, there shall be filed with the Secretary of State a certificate signed by the Chairman of the Board, the President and by the Secretary or an Assistant Secretary, of each constituent corporation. Such certificate shall contain a signed agreement of merger, or copy thereof.
- (5) If any constituent corporation in a merger consolidation is a foreign corporation, there shall also be filed in the proper office in the State under the laws of which such foreign corporation exists a copy of the agreement of merger and such other documents as are required by the laws of that State.

Ohio Revised Code §1701.80 and §1701.81.

To effectuate a legal merger under the laws of the State of New York, the following steps had to be completed:

- (1) In the event the merger involved an insurance company licensed by the State of New York, the merger had to be approved by the New York Superintendent of Insurance pursuant to §7105.
- (2) Compliance with §§901 et. seq., of the New York Business Corporation laws, including: "delivery to the Department of State a certificate, entitled Certificate of Merger under §907 of the Business Corporation law," setting forth various information. Section 907(a)(2). However, §907(f) provides that the "Department of State shall not file a certificate delivered to it under (a)(2) unless the consent of the State Tax Commissioner to the merger or consolidation is attached thereto."

Neither the OGICO/Burt, or the OGICO/FNY mergers met all requirements of the laws of Ohio and New York.

1. The OGICO/Burt Merger

While the OGICO/Burt Plan of Merger was (1) approved by the Board of Directors of Burt; (2) approved by the Board of Directors of OGICO; (3) approved by the shareholders of Burt; (4) approved by the New York Department of Insurance; (5) approved by the Ohio Department of Insurance; (6) contained all necessary provisions for compliance with Ohio law; and (7) was followed up with the necessary filing of Certificate of Merger with the Ohio Secretary of State's office, the merger did not meet all requirements under Ohio and New York law. In particular, the merger was never approved by the New York Tax Commissioner nor was a Certificate of Merger ever filed with the New York Secretary of State's office. Prior to the completion of these last two tasks, OGICO was placed into rehabilitation.

2. The OGICO/FNY Merger

As was the case with the OGICO/Burt merger, the OGICO/FNY merger was in compliance with most, but not all requisites under New York and Ohio law. The OGICO/FNY merger was (1) approved by the FNY Board of Directors; (2) approved by the OGICO Board of Directors; (3) approved by the FNY Shareholders; (4) approved by the Ohio Insurance Department; and (5) at least initially approved by the New York Department of Insurance. While final approval was not obtained from the New York Department of Insurance, the New York Department of Insurance has since indicated to counsel for the Liquidator that it will not contest or interfere with the administration of FNY by the Liquidator.

The OGICO/FNY merger failed to comply with Ohio and New York law in the following respects: (1) a Certificate of Merger was never filed with the Ohio Secretary of State's Office; (2) the New York Tax Commissioner never approved the merger; and (3) a Certificate of Merger was never filed with the New York Secretary of State's Office. In addition, because of the rehabilitation of OGICO, the shares of one of the eight shareholders of FNY were never purchased by OGICO.

**B. There Was A De Facto Merger Between Both OGICO and Burt And OGICO and FNY**

While all the formalities for a legal merger were not met in either the OGICO/Burt or the OGICO/FNY merger transactions, this fact alone should not prevent the recognition of a de facto merger of OGICO and Burt and OGICO and FNY by this Court. A de facto merger occurs where one corporation is merged into another, but without compliance with the statutory requirements for a merger. Ladjerardian v. Laidlaw-Coggeshall, Inc., 431 F. Supp. 834, 838 (S.D.N.Y. 1977). With respect to de facto merger issues, most recent decisions relate to the responsibility of a successor corporation for the liabilities of its predecessor. Arnold Graphics Industries, Inc. v. Independent Agent Center, Inc., 775 F. 2d 38 (2nd Cir. 1985). Courts are generally asked to determine whether the doctrine applies for the purpose of imposing liability on the successor corporation. The result of finding a de facto merger in this situation is to make the surviving corporation liable for the claims against the predecessor corporation. Id. at 42.

The de facto merger doctrine in Ohio, however, has not been limited to situations where surviving corporations are found responsible for the liabilities of the predecessor corporations. Ohio courts have recognized the consolidation of corporations which is not provided for in Ohio law, when the particularities of the situation allow no other result. In Union Trust Company v. New York, Chicago & St. Louis Railroad Companies, 9 Ohio Dec. Rep. 773 (Cuy. Common Pleas Ct., 1886), an Ohio court recognized the de facto existence of a consolidated corporation even though the consolidation was not in compliance with Ohio law. In that case, five constituent railroad companies consolidated to form the New York, Chicago & St. Louis Railroad Company. Only one of the five constituent companies was originally an Ohio corporation. Ohio law provided that an Ohio railroad could consolidate with other railroad companies if the railroads were in adjacent states, and if the railroads had already been built or were in the process of construction. Neither condition was true in the Union Trust case. Two of the constituent railroad companies were in states which did not adjoin Ohio, and not all of the railroads were under construction at the time of the consolidation.

Notwithstanding the failure to comply with Ohio law, the consolidation was attempted and completed by colorable proceedings, approved by proper state officials, and a Certificate of Incorporation was filed at the Ohio Secretary of State's Office. Moreover, the consolidated corporations incurred numerous obligations of various sorts.

Ultimately, a foreclosure action was initiated to foreclose on a mortgage issued by the New York, Chicago & St. Louis Railroad Company. One of the issues at trial was the corporate ability of the New York, Chicago & St. Louis Railroad Company to enter into legal obligations. In particular, many of the potential claimants argued that the New York, Chicago & St. Louis Railroad Company did not have the corporate power to enter into a mortgage because the very existence of the consolidated railroad was not in compliance with Ohio law. In rejecting this argument the Cuyahoga County Common Pleas Court stated:

It is claimed, and we find it to be true, that the consolidation of the five constituent railroad companies composing New York, Chicago & St. Louis Railroad Company, was not made in accordance with the authority of §3380 of the Revised Statute of the State, in two respects: (1) the several roads attempting to consolidate, had not, at the date of said attempted consolidation, "been built," nor were they then each of them, "in process of construction" as required by the statute. (2) the statute only authorized the consolidation with roads in adjoining states, while consolidation attempted in this case was the Ohio road with two roads in adjoining states, and also with two roads in states that did not adjoin the State of Ohio. But in view of the facts that the consolidation was attempted and apparently completed by colorable proceedings in a formal way; and it was approved by proper state officials, and the Certificate of its Incorporation, duly certified, admitted to record in the office of the Secretary of State of the State of Ohio, and its rights as such corporation were never challenged by the state; that as such it has acquired and disposed of valuable property, and incurred numerous obligations of various sorts, we hold that under the decision in the Perun case (41 Ohio St., 481), and other similar decisions, it is entitled to be considered at least a corporation de facto, with power to mortgage its property.

The consideration which has caused doubt upon this point is the fact that there is no law authorizing just the consolidation that was made, if every form of the statute had been fully complied with. But,

notwithstanding this fact, it is clear to us that there is no way to surmount the difficulties involved in the situation but to hold that it is a corporation de facto, that its acts are binding on lien-holders as well as the defendant which is estopped from disputing it, and that its mortgage is efficacious if right in other respects to create a preferred lien upon its property.

Id. at 775-76.

In a similar manner, the Liquidator requests that this Court find that a de facto merger occurred between OGICO and Burt and OGICO and FNY. The vast majority of the corporate formalities necessary for a legal merger under Ohio and New York law were complied with in both merger transactions. The necessary merger agreements were prepared, and signed by the proper parties. Moreover, requisite approvals were obtained by the board of directors of all constituent corporations, the Ohio Department of Insurance, and the New York Department of Insurance. More importantly, the officers and directors of OGICO treated the assets and liabilities of Burt and FNY as OGICO's after the merger agreements had been substantially completed. To attempt, at this late date, to treat FNY and Burt as entities separate and apart from OGICO is not practicable.

C. Burt And FNY Should Be Wound Up As Part Of The Overall OGICO Liquidation Proceeding.

At the current time, neither Burt nor FNY are recognized as members of the NYIE. As part of the ultimate resolution of the proceedings before the New York Supreme Court involving the New York Superintendent of Insurance, both Burt and FNY withdrew from the NYIE. It was only in recognition of their withdrawal from the exchange, that the New York Superintendent of Insurance dismissed

his appeals against both Burt and FNY. As such, the NYIE no longer has any regulatory authority over either Burt or FNY, even if it were determined that Burt and FNY still existed as separate legal entities.

In a similar manner, the New York Department of Insurance has taken the position that it no longer has regulatory authority over either Burt or FNY. As to Burt, the New York Department of Insurance expressly approved and gave recognition to the OGICO/Burt merger on December 29, 1989. While never officially approving the OGICO/FNY merger, the New York Department of Insurance has expressly stated that the "future administration and liquidation of the assets and liabilities of FNY shall be administered by the Liquidator and the Ohio courts, all as provided by the Ohio Revised Code." See Exhibit Q attached hereto.

With the decision of the New York Department of Insurance to refrain from taking any steps to liquidate Burt or FNY, the only remaining governmental authority in a position to liquidate Burt or FNY is the Ohio Superintendent of Insurance acting in his capacity as liquidator of OGICO. By confirming the de facto mergers of Burt and FNY with OGICO, and liquidating these two syndicates as part of the overall OGICO liquidation proceeding, the Liquidator can wind-up the affairs of these former syndicates which have long since terminated all operations as reinsurance companies.

As part of this process, it will be necessary for the Liquidator to take such steps as are reasonably available to consummate the merger transactions entered into by OGICO. For example, the Liquidator believes he has the authority under Ohio Revised Code §3903.21 to acquire the remaining shares of FNY held by Mutual Fire, as was contemplated by the Stock Purchase Agreement entered into by OGICO and FNY. OGICO was unable to acquire these shares in February, 1990 because Mutual Fire was in rehabilitation in Pennsylvania. When the Pennsylvania Rehabilitator agreed to the sale of the FNY shares, OGICO was in rehabilitation. Accordingly, the Liquidator herein seeks approval to purchase the remaining shares of FNY from Mutual Fire, should he be able to do so at a reasonable price. In addition, the Liquidator will take such other steps as are readily available at this time to fulfill the requirements which may yet be reasonably fulfilled.

Upon acquisition of the FNY shares held by Mutual Fire and this Court's confirmation of the de facto mergers between OGICO and the two former syndicates, the Liquidator will be able to proceed with the administration of the affairs of both Burt and FNY as part of the overall OGICO liquidation. Pursuant to Ohio Revised Code Chapter 3903, the Liquidator will marshall all assets of OGICO, including the assets which were formerly owned by Burt and FNY, as assets of the OGICO estate. Furthermore, pursuant to Ohio Revised Code Section 3903.22, the Liquidator will send notice of the liquidation of OGICO, with Burt and FNY as part thereof, to all potential claimants of the former syndicates, and request notice

in newspapers of general circulation pursuant to O.R.C. §3903.22. Such notice shall (1) inform all potential claimants of the merger of Burt and FNY with OGICO, and (2) require each claimant to submit a Proof of Claim on or before the date the Liquidator specifies in the notice. These steps will all be completed in such manner to ultimately allow the Liquidator to make distributions in accordance with the priority scheme set forth in Ohio Revised Code Section 3903.42. In order to do so, the Liquidator needs to review the books and records to identify potential claimants. This process will take additional time. The original deadline for submitting proofs of claim in the OGICO Liquidation has expired. The Liquidator has requested, and this Court has granted, extensions of that deadline for claimants of Burt and FNY depending on the determination of this Motion. If this Court grants the Liquidator's Motion, the Liquidator also requests that this Court extend the deadline for submitting proofs of claim until October 1, 1993.

#### **IV. CONCLUSION**

For all the reasons set forth above, the Liquidator respectfully requests that this Court determine that de facto mergers occurred between OGICO and Burt and OGICO and FNY, and authorize the Liquidator to administer the affairs of the two former syndicates as part of the overall OGICO liquidation. Such an Order will allow the Liquidator to continue the orderly liquidation of OGICO, and is consistent with the intent and actions

of the underlying parties prior to OGICO being placed into rehabilitation.

Respectfully submitted,

LEE I. FISHER  
ATTORNEY GENERAL STATE OF OHIO

BY: EMENS, KEGLER, BROWN,  
HILL & RITTER

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(614) 462-5400  
Attorneys for Harold Duryee in  
his capacity as Liquidator of  
The Oil & Gas Insurance Company

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Motion was served upon Harold Duryee, Ohio Superintendent of Insurance, in care of Lynne C. Hengle, Chief Deputy Liquidator, 1366 Dublin Road, 2nd Floor, Columbus, Ohio 43215, and to Ms. JoAnne Brazenor, Supervising Insurance Examiner, Property Companies Bureau, New York State Insurance Department, 160 West Broadway, New York, NY 10013, this \_\_\_\_ day of September by regular U.S. mail, postage prepaid.

\_\_\_\_\_  
Robert G. Schuler

Exhibit A

## STOCK PURCHASE AGREEMENT

This Stock Purchase Agreement (the "Agreement") is made and effective as of 12:01 a.m., September 29, 1989 (the "Effective Date"), by and among The Burt Syndicate, Inc. a New York corporation having its corporate offices at 3 East 54th Street, New York, New York 10022 (the "Subsidiary"), Ormond Re Group, Inc., a Florida corporation, the parent corporation of the Company, having its corporate offices at 140 South Atlantic Avenue, Ormond Beach, Florida 32074 (the "Company"), and the Oil and Gas Insurance Company, an Ohio corporation having its corporate offices at 101 Green Meadows Drive South, Columbus, Ohio 43216 (the "Buyer").

WHEREAS, the Subsidiary has ceased its operations as an insurance syndicate on the New York Insurance Exchange, Inc. (the "Business"); and

WHEREAS, the Buyer desires to purchase the common stock of the Subsidiary from the Company.

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth herein and in the exhibits hereto, and in reliance upon the representations, warranties, conditions and covenants contained in this Agreement, the Company and the Buyer do hereby agree as follows:

### ARTICLE I. DESCRIPTION OF PURCHASE.

Section 1.01. The Common Stock. Pursuant to this Agreement, the Company agrees to sell, and the Buyer agrees to purchase, all of the common stock of the Subsidiary.

### ARTICLE II. PURCHASE PRICE.

Section 2.01 The Purchase Price. For the common stock of the Subsidiary, the Buyer shall pay to the Company the sum of Five Hundred Thousand dollars (\$500,000.00), at the time of closing.

### ARTICLE III. REPRESENTATIONS AND WARRANTIES OF THE COMPANY.

The Company hereby represents and warrants to the Buyer as follows:

Section 3.01. Organization and Standing of the Company. The Company is a corporation duly organized, validly existing and in good standing under the laws of Florida with corporate power and authority to own and operate the Subsidiary.

Section 3.02. Authorization. The Company has corporate power and authority to enter into this Agreement and the Company has corporate power and authority to perform its obligations hereunder. Assuming the due execution and delivery by the Buyer of this Agreement, this Agreement will be a valid and binding obligation of the Company, enforceable against it in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, moratorium or other similar laws affecting creditors' rights generally or by the principles governing the availability of equitable remedies.

Section 3.03. Taxes. The Subsidiary has filed or will file all Tax (hereinafter defined) returns and reports required to be filed by it in connection with the Business and has paid or will pay all Taxes shown on said returns and reports as required to be paid in connection with the Business, during or with respect to any period which ends on or before the Effective Date (including, in the case of a taxable period that includes the Effective Date, the part of such period which ends on the Effective Date). The Subsidiary is not delinquent in the payment of any Taxes required to be paid in connection with the business. For the purposes of this Agreement, "Taxes" (or "Tax" as the context may require) means all federal, state, county, local, foreign and other net income or premium taxes, and includes interest, additions to tax and penalties with respect thereto.

Section 3.04. Title to the Common Stock. The Company has good and marketable title to the Common Stock free from, and clear of, any mortgage, lien, claim, encumbrance, security interest, charge or other objection other than mortgages, liens, claims, encumbrances, security interests, charges, title or other objections which in the aggregate do not have a Material Adverse Effect. For the purposes of this Agreement, "Material Adverse Effect" means any effect which will have a determinable material adverse economic effect on the business taken as a whole.

Section 3.05. Actions and Proceedings. Except as set forth in Schedule 3.05 hereto, the Company is aware of no outstanding orders, decrees or judgments by or with any court, governmental agency, regulatory body or arbitration tribunal to which the Company or the Subsidiary is a party which, individually or in the aggregate, would have, in the

reasonable judgment of its counsel, a Material Adverse Effect. Except as set forth in Schedule 3.05, there are, to the best knowledge of the Company, no actions, suits or claims, or legal, administrative or arbitration proceedings, pending or threatened against the Company in connection with the Business which, if adversely determined, would have, in the reasonable judgment of its counsel, a Material Adverse Effect.

Section 3.06. No Conflict or Violation. The execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby in accordance with the respective terms and conditions hereof will not (a) violate any provision of the Articles of Incorporation, By-Laws or other charter or organizational document of the Company; (b) violate, conflict with or result in the breach of any of the terms of, result in any modification of the effect of, otherwise give any other contracting party the right to terminate, or constitute (or with notice or lapse of time or both, constitute) a default under, any contract or other agreement to which the Company is a party or by or to which they or any of the Common Stock may be bound or subject and which would have a Material Adverse Effect; (c) to the best knowledge of the Company, violate any order, judgment, injunction, award or decree of any court, arbitrator or governmental or regulatory body against, or binding upon, or any agreement with, or condition imposed by, any governmental or regulatory body, foreign or domestic, binding upon the Company, or upon the policies, the Common Stock, or the Business (other than those violations which in the aggregate would not have a Material Adverse Effect); or (d) to the best knowledge of the Company, violate any statute, law or regulation of any jurisdiction as such statute, law or regulation relates to the Company, or to the policies, the Common Stock, or the Business (other than those violations which in the aggregate would not have a Material Adverse Effect).

Section 3.07. Consents and Approvals. All necessary consents and approvals required as a prerequisite to the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby in accordance with the terms hereof have been obtained by the Company.

Section 3.08. Broker's and Finder's Fees. No agent, broker, finder or other Person acting on behalf of the Company is or will be entitled to any commission or broker's or finder's fees from any of the parties hereto in connection with this Agreement or the transactions contemplated hereby.

Section 3.09. Compliance with Laws. To the best knowledge of the Company, the Company is in compliance with (a) all applicable orders, judgments, injunctions, awards, decrees to which the Company is a party affecting the Business for which noncompliance would have a Material Adverse Effect; and (b) all federal, state, local or foreign laws, ordinances, or regulations or any other requirements of any governmental or regulatory body, court or arbitrator applicable to the Business for which noncompliance would have a Material Adverse Effect, and the Company has received no written notice that any such noncompliance is being alleged.

Section 3.10. Insurance Business. All policies of insurance and reinsurance issued by the Subsidiary in connection with the Business as now in force are, to the extent required under applicable law, on forms approved by applicable insurance regulatory authorities or which have been filed and not objected to by such authorities within the period provided for objection. Any premium rates established in connection with the policies and the Business which are required to be filed with or approved by insurance regulatory authorities have been so filed or approved and the premiums charged conform thereto. The foregoing representations contained in this Section 3.10 shall not apply with respect to the absence of any approval or filing which would not have a Material Adverse Effect.

Section 3.11. Regulatory Filings. The Subsidiary has filed all reports, statements, documents, registrations, filings or submissions required to be filed in connection with the Business, as well as in connection with all of the transactions contemplated hereby, and with any governmental or regulatory body, in each case other than any filings the failure of which to make would not have a Material Adverse Effect. All such registrations, filings and submissions were in compliance in all material respects with applicable law when filed or as amended or supplemented, and no deficiencies have been asserted by any such governmental or regulatory body with respect to such registrations, filings or submissions that have not been satisfied except such that would not have a Material Adverse Effect.

ARTICLE IV. REPRESENTATIONS AND WARRANTIES OF THE BUYER.

The Buyer hereby represents and warrants to the Company as follows:

Section 4.01. Organization and Standing of the Buyer. The Buyer is a corporation duly organized, validly existing and in good standing under the laws of the State of Ohio with corporate power and authority to own and operate the Subsidiary and to carry on the Business.

Section 4.02. Authorization. The Buyer has all corporate power and authority to enter into this Agreement, and the Buyer has all corporate power and authority to perform its obligations hereunder. The execution and delivery by the Buyer of this Agreement and the performance by the Buyer of its obligations hereunder have been duly authorized. Assuming the due execution and delivery by the Company of this Agreement, this Agreement will be a valid and binding obligation of the Buyer, enforceable against it in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, moratorium or other similar laws affecting creditors' rights generally or by the principles governing the availability of equitable remedies.

Section 4.03. Actions and Proceedings. The Buyer is aware of no outstanding orders, decrees or judgments by or with any tribunal, or any actions, suits or claims or other legal or administrative proceedings pending or threatened against or involving the Buyer, which could, individually or in the aggregate, interfere with the Buyer's performance of this Agreement.

Section 4.04. No Conflict or Violation. The execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby in accordance with the terms and conditions hereof will not (a) violate any provision of the Articles or Certificate of Incorporation, By-laws or other charter or organizational document of the Buyer; (b) violate, conflict with or result in the breach of any of the terms of, result in any modification of the affect of, otherwise give any other contracting party the right to terminate, or constitute (or with notice of lapse of time or both, constitute) a default under, any contract or other agreement to which the Buyer is a party or by or to which it or any of its assets or properties may be bound or subject; (c) to the best knowledge of the Buyer, violate any order, judgment, injunction, award or decree of any court, arbitrator or governmental or regulatory

body against, or binding upon, or any agreement with, or condition imposed by, any governmental or regulatory body, foreign or domestic, binding upon the Buyer, or upon the securities, assets or business of the Buyer; or (d) to the best knowledge of the Buyer, violate any statute, law or regulation of any jurisdiction as such statute, law or regulation relates to the Buyer or to the securities, properties or business of the Buyer.

Section 4.05. Consents and Approval. The execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby in accordance with the terms hereof are subject to the Buyer obtaining the consent, approval or action of The Insurance Department of the State of Ohio and making any filings with or giving notice to, any organization, or other regulatory body that is required.

Section 4.06. Brokers and Financial Advisers. No broker, finder or financial adviser has acted directly or indirectly as such for, or is entitled to any compensation from, the Buyer in connection with this Agreement or the transactions contemplated hereby.

Section 4.07. Certain Licensing Matters. The Buyer is duly licensed, qualified or otherwise authorized to conduct the Business, and is in good standing, in all jurisdictions in which the Business is conducted on the Closing date.

#### ARTICLE V. COVENANTS.

The Company and the Buyer, as appropriate, covenant as follows, except as otherwise consented to or approved in writing by an authorized officer of the other or as required by this Agreement.

Section 5.01. Continued Access by the Company. At any time or subsequent to the Effective Date, the Buyer shall allow and enable the Company, during regular business hours, through its employees and representatives, to examine and make copies of the files in the Buyer's possession or control pertaining to any matters identified by the Company, for any reasonable business purpose including, but not limited to, the preparation or examination of Tax returns and financial statements and the conduct of any litigation or regulatory dispute resolution, whether pending or threatened. Access to such files shall be at the Company's expense and may not unreasonably interfere with the Buyer's business operations.

Section 5.02. Consents and Best Efforts. The Company and the Buyer will cooperate to take all reasonable actions required to obtain all consents, approvals and agreements of, and to give and make all notices and filing with, any governmental authorities and regulatory agencies, necessary to authorize, approve and permit the consummation of the transactions contemplated by this Agreement.

Section 5.03. Further Assurances. Subject to the terms and conditions herein provided, the Company and the Buyer will each use its best efforts to take, or cause to be taken, all action or do, or cause to be done, all things or execute any documents necessary, proper or advisable, to consummate and to make effective the transactions contemplated by this Agreement.

Section 5.04. Expenses. Except as otherwise specifically provided herein, the parties to this Agreement shall bear their respective expenses incurred in connection with the preparation, execution and performance of this Agreement and the transactions contemplated hereby, including, without limitation, all fees and expenses of agents, representatives, counsel, actuaries and accountants.

Section 5.05. Notification of Certain Matters. The Company on the one hand, and the Buyer, on the other hand, will give prompt notice to the other after it has obtained knowledge of the occurrence, or failure to occur, of any event which occurrence or failure would or would be likely to cause any of their respective representations or warranties contained in this Agreement to be untrue or incorrect in any material respect.

Section 5.06. The Company's and Buyer's Right to Cure Breaches. The Company and the Buyer shall have the right for a reasonable period to seek to cure any breach or potential breach of any representation made by it in this Agreement. Each party shall cooperate with the other party in connection with the other party's attempt to cure any such breach, or potential breach, including but not limited to providing the other party, its employees and representatives, access to any necessary books and records and making available any necessary personnel.

Section 5.07. Transfer of Stock Certificate. At the closing, the Company shall deliver to the Buyer the Stock Certificates of the Subsidiary duly endorsed to transfer full and complete title of the Company's interest in the Subsidiary to the Buyer. Immediately after the closing, the Subsidiary will be

merged with the Buyer and the Buyer will have no right to the name "The Burt Syndicate, Inc."

ARTICLE VI. THE CLOSING.

Section 6.01. The Closing Date. The execution and delivery of the Agreement and any documents, certificates or opinions to which either of the parties is entitled under ARTICLE VII and VIII and payment of funds due under ARTICLE II (such execution, delivery, and payments herein referred to as the "Closing") shall take place on Friday, October 27, 1989 at 11:00 a.m. in the offices of Forum Re Group Inc. at 30 Monument Square, Concord, Massachusetts or at such time and date as may be mutually agreed to by the parties hereto (such time and date herein referred to as the "Closing Date").

ARTICLE VII. CONDITIONS PRECEDENT TO THE OBLIGATION OF THE BUYER TO CLOSE.

The obligation of the Buyer to enter into and complete the Closing is subject to the fulfillment on or prior to the Closing Date of the following conditions, any one or more of which may be waived in writing by it to the extent permitted by law.

Section 7.01. Representations and Covenants. The representations and warranties of the Company contained in this Agreement shall be true and correct in all material respects on and as of the Closing Date with the same force and effect as though made on and as of the Closing Date, except that any such representations and warranties that are given as of a particular date and relate solely to a particular date or period shall be true and correct in all material respects as of such date or period. The Company shall have performed and complied in all material respects with all covenants and agreements required by this Agreement to be performed or complied with by the Company on or prior to the Closing Date.

Section 7.02. Approval by New York Insurance Exchange and New York Insurance Department. In addition to the approvals and consents required to be obtained by the Company prior to the Closing, the Company shall obtain prior to the Closing from the New York Insurance Exchange (the "Exchange") any and all required approvals of the transactions contemplated by this Agreement. In connection with such approvals by the Exchange, the Company will also obtain from the Exchange an unconditional release of the Buyer for any prospective

liability or causes of action including but not limited to those relating to Exchange dues and assessments or the Fiduciary Account maintained by the Exchange on the Subsidiary's behalf. In addition to this release by the Exchange, the Company shall agree to indemnify the Buyer for all such prospective liabilities and causes of action.

The Company shall also obtain an opinion by its counsel that the releases executed by the Exchange are sufficient to release the Subsidiary from any additional liability to the Exchange.

The Company shall also obtain all necessary and appropriate approvals and consents from the New York Insurance Department (the "Department") regarding the Department's deference to the Exchange on this matter as well as the Department's approval of the transactions contemplated by this Agreement. The Company shall further obtain, prior to the Closing, the approval and consent if such approval and consent is deemed necessary, of the N.Y.I.E. Security Fund, Inc., as well as any other regulatory body, to the transactions contemplated by this Agreement. Each and every consent and approval required by this Section 7.02 shall be attached hereto as an Exhibit and made a part hereof.

Section 7.03. Possession of Assets; Instruments of Conveyance. The Company shall deliver to the Buyer such deeds, bills of sale, endorsements, assignments and other good and sufficient instruments of conveyance and transfer as shall be effective to vest in the Buyer all of the right, title and interest of the Company in and to the Common Stock as provided in this Agreement.

Section 7.04. Litigation. No action, suit or proceeding shall have been instituted and be continuing or be threatened, by any governmental or regulatory body or any other person or entity to restrain, modify or prevent the carrying out of the transactions contemplated by this Agreement, or to seek damages in connection with such transactions or the Business, that has or is reasonably likely to have a Material Adverse Effect; provided, however, that in the case of any pending or threatened action, suit or proceeding, this condition shall be deemed satisfied if the Company agrees in writing to indemnify the Buyer with respect to such action, suit or proceeding pursuant to the provisions of Article X.

Section 7.05. Governmental and Regulatory Consents and Approvals. All permits and approvals from governmental and regulatory bodies required for the execution and performance

of this Agreement shall have been obtained and shall be in full force and effect and without conditions or limitations which unreasonably restrict the ability of the parties hereto to perform this Agreement, and the Buyer shall have been furnished with appropriate evidence, reasonably satisfactory to it and its counsel, of the granting of such permits. There shall not have been any action taken by any court, governmental or regulatory body prohibiting or making illegal on the Closing Date the transactions contemplated by this Agreement. The waiting periods, if any, required by any regulatory agencies shall have expired.

Section 7.06. Other Documents. The Company shall have provided the Buyer and its counsel with other certificates or other documents customary for transactions of this type relating to the Business in connection with the Closing that the Buyer may reasonably request.

ARTICLE VIII. CONDITIONS PRECEDENT TO THE OBLIGATION OF THE COMPANY TO CLOSE.

The obligation of the Company to enter into and complete the Closing is subject to the fulfillment on or prior to the Closing Date of the following conditions, any one or more of which may be waived by it to the extent permitted by law.

Section 8.01. Representations and Covenants. The representations and warranties of the Buyer contained in this Agreement shall be true and correct in all material respects on and as of the Closing Date with the same force and effect as though made on and as of the Closing Date, except that any such representations and warranties that are given as of a particular date and relate solely to a particular date or period shall be true and correct in all material respects as of such date or period. The Buyer shall have performed and complied in all material respects with all covenants and agreements required by this Agreement to be performed or complied with by the Buyer on or prior to the Closing Date.

Section 8.02. Litigation. No action, suit or proceeding shall have been instituted and be continuing or be threatened by any governmental or regulatory body to restrain, modify or prevent the carrying out of the transactions contemplated by this Agreement, or to seek damages in connection with such transactions.

Section 8.03. Governmental and Regulatory Consents and Approvals. All permits and approvals from governmental and

asserted. Except as set forth in clauses (i) and (ii) of Subsection (a) or Subsection (b) as the case may be, of Section 10.01 neither the Company nor the Buyer, as the case may be, shall be liable with respect to any General Claim in respect of which the party asserting such General Claim has not given to the other party written notice on or prior to December 27, 1990.

Section 9.02 Definition of General Claim. "General Claim" means any claim based upon, arising out of or otherwise in respect of any misrepresentation or any breach of any representation, warranty, covenant or agreement of the Company on the one hand, or the Buyer on the other hand, contained in this Agreement.

#### ARTICLE X. INDEMNIFICATION.

Section 10.01. Obligation to Indemnify. (a) The Company agrees to indemnify, defend and hold harmless the Buyer (and its directors, officers, employees, affiliates and consented assigns) from and against all claims, losses, liabilities, damages, deficiencies, costs or expenses (including interest, penalties and reasonable attorneys' fees and disbursements) ("Losses"), based upon: (i) a general Claim against the Subsidiary subject to the limitations contained in Article IX; (ii) any Tax liability assessed against the Buyer which related to Tax returns filed by the Company or Subsidiary for any taxable period ending on or prior to the Effective Date or which is incurred as a result of events which occur prior to the Effective date; and (iii) any fees or commissions incurred by the Company or Subsidiary in connection with the transactions contemplated by this Agreement.

(b) The Buyer agrees to indemnify, defend and hold harmless the Company, (and their directors, officers, employees, affiliates and assigns) from and against all Losses, based upon: (i) a General Claim against the Buyer subject to the limitations contained in Article IX; (ii) any Tax liability assessed against the Company and its Subsidiary which relates to Tax returns filed by the Buyer for any taxable period ending after the Effective Date or which is incurred as a result of events which occur after the Effective Date; (iii) any claims, actions, or proceedings relating to: (x) the Business, which arise out of events occurring after the Effective Date, (y) any other business of the Buyer; and (iv) and fees or commissions incurred by the Buyer in connection with the transactions contemplated by this Agreement.

Section 10.02. Notice of Asserted Liability. Promptly after receipt by an indemnified party hereunder of notice of any demand, claim or circumstances which, with the lapse of time, would give rise to a claim or the commencement (or threatened commencement) of any action, proceeding or investigation (an "Asserted Liability") that may result in a Loss, such indemnified party shall give notice thereof (the "Claims Notice") to the indemnifying party. The Claims Notice shall describe the Asserted Liability in reasonable detail and shall indicate the amount (estimated, if necessary) of the Loss that has been or may be suffered by such indemnified party.

Section 10.03. Opportunity to Defend. The indemnifying party may elect to compromise or defend, at its own expense and by its own counsel, any Asserted Liability, provided, however, that the indemnifying party may not compromise or settle any Asserted Liability without the consent of the indemnified party or parties (which shall not be unreasonably withheld) unless such compromise or settlement requires no more than a monetary payment for which the indemnified party or parties hereunder are fully indemnified or involves other matters not binding upon the indemnified party or parties. If the indemnifying party elects to compromise or defend such Asserted Liability, it shall within 30 days (or sooner, if the nature of the Asserted Liability so requires ) notify the indemnified party or parties of its intent to do so, and the indemnified party or parties shall cooperate, at the expense of the indemnifying part with respect to out-of-pocket expenses of the indemnified party or parties in the compromise of, or defense against, such Asserted Liability. If the indemnifying party elects not to compromise or defend the Asserted Liability fails to notify the indemnified party or parties of its election as herein provided or contests its obligation to indemnify under Section 10.01, the indemnified party or parties may pay, compromise or defend such Asserted Liability in respect of any Asserted Liability for which the indemnifying party may have an indemnification obligation under Section 10.01. In any event, the indemnified party or parties and the indemnifying party may participate, at the expense of the indemnifying party, in the defense of such Asserted Liability in respect of any Asserted Liability for which the indemnifying party may have an indemnification obligation under Section 10.01. If the indemnifying party chooses to defend any Asserted Liability, then the indemnified party or parties shall make available to the indemnifying party and books, records, or other documents within its or their control, and shall otherwise also fully cooperate, as are or may be reasonably necessary or appropriate for the defense.

ARTICLE XI. CONFIDENTIALITY.

Section 11.01. Confidential Information. The Company and the Buyer agree that the Business is confidential information constituting trade secrets and will not be disclosed or revealed to any other Person, and the Company confirms that after the Closing, such information will constitute the exclusive property of the Buyer; provided, however, that the foregoing shall not prohibit the Company from disclosing or revealing to any Person any information which (a) either is or becomes publicly available through no fault of the Company; (b) is contained in the Company's books or records relating to other business conducted by the Company; or (c) is received from a third party not under a confidentiality obligation; or (d) is required to be disclosed pursuant to law or court order of any Tax or other regulatory inquiry; or (e) relates solely to such Person where such Person is an insured under a Policy in which case the disclosure shall be only to such Person.

ARTICLE XII. MISCELLANEOUS.

Section 12.01. Publicity. Except as may otherwise be required by law, no publicity release or announcement concerning this Agreement or the transactions contemplated hereby shall be made without the prior approval of the Company and the Buyer as to both the content and the manner of presentation and publication thereof.

Section 12.02. Notice. Any notice or other communication required or permitted under this Agreement shall be in writing and shall be delivered personally, telegraphed or sent by certified, registered or express mail, postage prepaid. Any such notice shall be deemed given when so delivered personally, telegraphed or, if mailed, on the date of receipt as follows:

(i) if to the Buyer to:

L. Edward Bobb  
The Oil & Gas Insurance Company  
101 Green Meadows Drive South  
P.O. Box 1839  
Columbus, Ohio 43216

with a copy to:

Paul W. Collins, Esq.  
Forum Holdings U.S.A., Inc.  
30 Monument Square  
Concord, MA 01742

(ii) if to the Company to:

Ormond Re Group, Inc.  
140 South Atlantic Avenue  
P.O. Box 2564  
Ormond Beach, Florida 32075-2574

with a copy to:

Peter H. Bickford, Esq.  
Bickford Hahn & Hayes  
3 East 54th Street  
New York, New York 10022

(iii) if to the Subsidiary to:

W. Lockwood Burt  
The Burt Syndicate, Inc.  
140 South Atlantic Avenue  
P.O. Box 2564  
Ormond Beach, Florida 32075-2574

Any party may by notice given in accordance with this Section 12.02. to the other party designate another address or person for receipt of notices hereunder.

Section 12.03. Entire Agreement. This Agreement (including its exhibits and schedules) contains the entire agreement among the parties and supersedes all prior agreements written or oral with respect of the subject matter.

Section 12.04. Waivers and Amendments; Non-Contractual Remedies; Preservation of Remedies. This Agreement may be amended, superseded, cancelled, renewed or extended, and the terms hereof may be waived, only by a written instrument signed by each of the parties or, in the case of a waiver, by the party waiving compliance. No delay on the part of any party in exercising any right, power or privilege hereunder shall operate as a waiver thereof. Nor shall any waiver on the part of any party of any such right, power or privilege, not any single or partial exercise of any such right, power or privilege, preclude any further exercise thereof or the exercise or any other such right, power or privilege. The rights and remedies herein provided are cumulative and are not exclusive of any rights or remedies that any party may otherwise have at law or in equity, except that the indemnity provided in ARTICLE X shall be exclusive where it is applicable.

Section 12.05. Governing Law. This Agreement shall be governed by and construed in accordance with the substantive laws of the State of New York.

Section 12.06. Submission to Jurisdiction. (a) Any suit, claim, action or proceeding arising out of or relative to this Agreement, or for the enforcement of any judgment or order entered by any court in respect thereof, shall be brought in the United States District Court of the Southern District of New York or, in the event such court does not accept jurisdiction, in a state court of competent jurisdiction in New York, New York, and each of the parties hereto hereby submits to the jurisdiction of either of such courts.

(b) Each of the parties hereto hereby (i) irrevocably consents to the jurisdiction of the courts referred to in Subsection (a) of this Section 12.06, in connection with any matter arising out of this Agreement; (ii) waives personal service of any summons, complaint, or other process in connection with any such matter and agrees that the service thereof may be made in the manner set forth in Section 12.02; provided, however, that in the alternative, either party hereto may elect service on the other party in any other form or manner permitted by law; and (iii) agrees that should such party fail to appear or answer within thirty (30) days after the date of service upon it of the summons, complaint or

other process, such party shall be deemed in default and judgment may be entered by the other party against such party for the amount or such other relief as may be demanded in any summons, complaint or other process so served.

(c) Each of the parties hereto irrevocably waives any objection which it may now or hereafter have to the laying of venue of any suit, claim, action or proceeding arising out of or relating to this Agreement, in the courts referred to in Subsection (a) of this Section 12.06 and further irrevocably waives any claim that any such suit, claim, action or proceedings brought in any such court has been brought in an inconvenient forum.

Section 12.07. Sales Tax. Any sales or use tax or other transfer or similar tax payable by reason of the transactions contemplated by this Agreement shall be split by the Buyer and the Company in equal amounts.

Section 12.08. Assignment. This Agreement, and each of the rights and obligations, shall not be assignable by either party without the written consent of the other party, and any such non-consented assignment shall be void.

Section 12.09. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors, assigns, and legal representatives.

Section 12.10. Severability. In the event that any one or more of the provisions contained in this Agreement for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement.

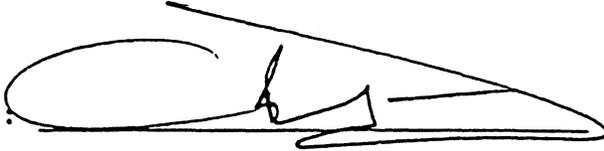
Section 12.11. No Third-Party Beneficiaries. Nothing in this Agreement is intended or shall be construed to give any person, other than the parties hereto and the other persons referred to in Section 10.01, any legal or equitable right, remedy or claim under or in respect of this Agreement or any provision contained herein.

Section 12.12. Counterparts. This Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same instrument. Each counterpart may consist of a number of copies hereof each signed by less than all, but together signed by all of the parties hereto.

Section 12.13. Headings The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement on the Closing Date effective as of the Effective Date.

THE OIL & GAS INSURANCE COMPANY

By: 

Name: CLIVE BECHER-JONES

Title: PRESIDENT

Date: 12/27/89

ORMOND RE GROUP, INC.

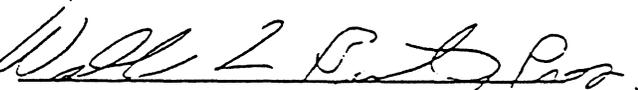
By:  

Name: DAVID A. BURT WALLACE L. BURT

Title: Executive Vice President PRESIDENT

Date: 12/27/89

THE BURT SYNDICATE, INC.

By: 

Name: WALLACE L. BURT

Title: PRESIDENT

Date: 12/27/89

### SCHEDULE 3.05

#### The Liquidation Proceeding

On October 31, 1986, the Superintendent of Insurance of the State of New York commenced a proceeding in the Supreme Court of the State of New York, County of New York, entitled In the Matter of the Application of JAMES P. CORCORAN, as Superintendent of Insurance of the State of New York, for an order to take possession of and liquidate the business of and dissolve BURT SYNDICATE, INC. (the "Syndicate").

In response to the proceeding, the Company proposed a plan of rehabilitation to the Court.

The plan included the approval of the commutation of approximately 96% of the Syndicate's outstanding losses. The remaining non-commuted liabilities were reinsured with Forum Reinsurance Company Limited ("Forum") with a \$4 million cover with the full limit in trust at the Bank of New York. The order also provides that after completion of the plan, the Syndicate must have \$1 million in surplus and be in a position to continue doing an insurance business in New York, which business shall not be the self-liquidation of the Syndicate.

Pursuant to the Court approved plan, an application was filed in November, 1988 in New York for American Farm Insurance Company of New York ("American Farm"). The intention was that American Farm would acquire the assets and liabilities of the Syndicate, and be authorized to write animal insurance as defined under Section 1113(11) of the New York Insurance Law.

On July 25, 1988 Justice Irving Kirschenbaum signed an order approving the Syndicate's plan of rehabilitation and adjourned the order to show cause pending completion of the plan.

After the Syndicate presented evidence of the completion of its plan and the restoration of its surplus to in excess of \$1 million, Justice Kirschenbaum, on December 20, 1988, dismissed the entire liquidation proceeding.

The Superintendent of Insurance has served a notice of intent to appeal this dismissal, and has informed the Syndicate that it must be subject to the regulatory control of the New York Insurance Exchange, Inc. (the "Exchange"). The

Superintendent of Insurance has also informed the Syndicate that the application of American Farm Insurance Company will not be approved.

The Superintendent of Insurance has informed the Syndicate that the appeal will be pursued, but on September 27, 1989, the Attorney General of the State of New York, representing the Superintendent of Insurance and counsel for the Syndicate signed a stipulation adjourning the appeal to the March, 1990 term of the Appellate Division, First Department.

Arbitration with Continental Casualty.

This matter involves a claim by Continental Casualty (CNA) against the Burt Syndicate and several other Syndicates on the New York Insurance Exchange, and Willcox, Inc. The Statement of Claim seeks allocated loss expenses under a Reinsurance Certificate in the amount of approximately \$762,000.00, plus interest, with The Burt Syndicate's share being \$190,500.00, plus interest. The issue is whether the Reinsurers are liable for allocated loss expenses in excess of the limits reinsured. The original insured is W.R. Grace.

It is the position of The Burt Syndicate as well as the other participating NYIE Syndicates that allocated loss expenses were, in fact, included in the certificate limits which the Syndicates have previously paid, due to exhaustion of our layer, for settlement of a claim.

The Arbitration currently under way in the State of New York calls for discovery to be completed by November, 1989, and hearings should begin shortly thereafter.

As indicated above, The Burt Syndicate has previously issued loss payments totaling \$112,500.00, representing its maximum exposure under the Reinsurance Certificate issued to CNA. The Syndicates have retained the services of Philip Walsh of the law firm of Wilson Elser Moskowitz Edelman & Dickler in New York to represent their interest in the Arbitration.

The Syndicate is maintaining a precautionary expense reserve in the amount of \$1.00.

Exhibit B

9

RESOLUTION OF THE  
BOARD OF DIRECTORS OF  
THE OIL & GAS INSURANCE COMPANY

The Undersigned, being all of the directors of The Oil & Gas Insurance Company, a corporation organized and existing under the Laws of the State of Ohio, do hereby adopt the following resolutions:

WHEREAS, pursuant to a Stock Purchase Agreement by and among ORMOND RE GROUP, INC., THE BURT SYNDICATE, INC. and THE OIL & GAS INSURANCE COMPANY, all of the shares of common stock of THE BURT SYNDICATE, INC. have been purchased by THE OIL & GAS INSURANCE COMPANY, and

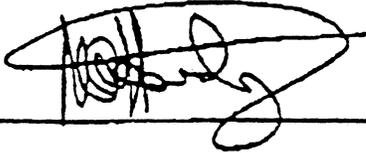
WHEREAS, a Plan of Merger has been proposed by and between THE BURT SYNDICATE, INC. and THE OIL & GAS INSURANCE COMPANY as constituent corporations, whereby THE BURT SYNDICATE, INC. is designated as the Subsidiary Corporation and THE OIL & GAS INSURANCE COMPANY is designated as The Surviving Corporation, and

WHEREAS, pursuant to the Plan of Merger, annexed hereto, THE BURT SYNDICATE, INC. shall transfer to THE OIL & GAS INSURANCE COMPANY all of its assets and liabilities, and

WHEREAS, in the opinion of this Board of Directors, it is in the best interest of this Corporation that The Plan of Merger be adopted and that the Certificate of Merger annexed hereto be filed with The Secretary of State of The State of Ohio, be it

RESOLVED, That The Plan of Merger of THE BURT SYNDICATE, INC. and THE OIL & GAS INSURANCE COMPANY and the Certificate of Merger are hereby accepted and approved, and

RESOLVED FURTHER, That The President is hereby authorized to make, execute and deliver the aforementioned Plan of Merger.



---

Mark G. Hardy



---

Clive Becker-Jones

---

Dale D. Dixon

---

L. Edward Bobb

---

John P. O'Brien

PWC/nez

1045A

RECEIVED  
DEC 28 1989  
INSURANCE DEPT.  
PROPERTY COMPANIES BUREAU

IN WITNESS WHEREOF, the said THE OIL & GAS INSURANCE  
COMPANY in accordance with the resolution of its Board of  
Directors duly passed on December 11th, 1989, has affixed its  
corporate seal, and caused the same to be subscribed and  
attested in its name by its President and Secretary, at the  
City of Concord, in the State of  
Massachusetts, on December 27, 1989.

J. Chris Ludge, Secretary

RESOLUTION OF THE  
BOARD OF DIRECTORS OF  
THE BURT SYNDICATE, INC.

The Undersigned, being all the directors of THE BURT SYNDICATE, INC., a corporation organized and existing under the Laws of the State of New York, do hereby adopt the following resolutions:

WHEREAS, pursuant to a Stock Purchase Agreement by and among ORMOND RE GROUP, INC., THE BURT SYNDICATE, INC. and THE OIL & GAS INSURANCE COMPANY, all of the shares of common stock of THE BURT SYNDICATE, INC. have been purchased by THE OIL & GAS INSURANCE COMPANY, and

WHEREAS, a Plan of Merger has been proposed by and between THE BURT SYNDICATE, INC. and THE OIL & GAS INSURANCE COMPANY as constituent corporations, whereby THE BURT SYNDICATE, INC. is designated as the Subsidiary Corporation and THE OIL & GAS INSURANCE COMPANY is designated as The Surviving Corporation, and

WHEREAS, pursuant to the Plan of Merger, annexed hereto, THE BURT SYNDICATE, INC. shall transfer to THE OIL & GAS INSURANCE COMPANY all of its assets and liabilities, and

WHEREAS, in the opinion of this Board of Directors, it is in the best interest of this Corporation that the Plan of Merger be adopted and that the Certificate of Merger annexed hereto be filed with The Secretary of State of The State of New York, be it

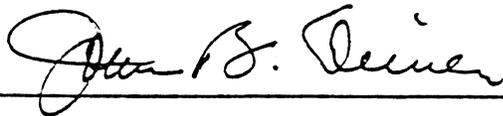
RESOLVED, that the Plan of Merger of THE BURT SYNDICATE, INC. and THE OIL & GAS INSURANCE COMPANY and the Certificate of Merger are hereby accepted and approved, and

RESOLVED FURTHER, that the President is hereby authorized to make, execute and deliver the aforementioned Plan of Merger.

  
W. Lockwood Burt

  
David A. Burt

IN WITNESS WHEREOF, the said THE BURT SYNDICATE, INC. in accordance with the resolution of its Board of Directors duly passed on December 15, 1989, has affixed its corporate seal, and caused the same to be subscribed and attested in its name by its President and Secretary, at the City of Ormond Beach, in the State of Florida, on December 26, 1989.



\_\_\_\_\_, Secretary

JOHN B. DEINER

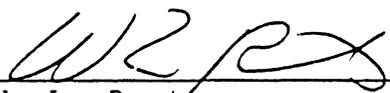
CERTIFICATE OF CONSENT  
OF SHAREHOLDERS

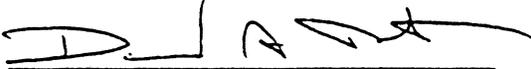
WHEREAS, on the            day of October, 1989, the Directors of ORMOND RE GROUP, INC., by unanimous vote of the whole Board, at a meeting called for that purpose, did adopt resolutions...

1) accepting the offer of The Oil & Gas Insurance Company to acquire all of the Common Stock of THE BURT SYNDICATE, INC. upon the terms and conditions set forth in a proposed agreement; and

2) authorizing the President and Secretary to make and execute the proposed agreement upon the written approval of same by the shareholders;

NOW THEREFORE, the undersigned shareholders of the Corporation, representing all the shares of the Corporation entitled to vote thereon, by this writing do hereby approve and adopt the proposed agreement for the sale of the Common Stock of THE BURT SYNDICATE, INC. to The Oil & Gas Insurance Company.

  
\_\_\_\_\_  
W. L. Burt

  
\_\_\_\_\_  
D. A. Burt

  
\_\_\_\_\_  
J. B. Deiner

  
\_\_\_\_\_  
V. L. Wolfe

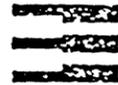
Exhibit C

Exhibit C

New York Insurance  
Exchange, Inc.  
111 FURCH STREET  
NEW YORK, NY 10038

212 615 8710  
Telex No. 91067 NYIE NYK  
Radiata 212 233 6704

October 18, 1989



INSURANCE  
EXCHANGE

Ms. Miriam Boggio  
Deputy Superintendent  
State of New York Insurance  
Department  
160 West Broadway  
New York, New York 10013

Dear Ms. Boggio:

This letter is a follow-up to our phone conversation regarding the sale of the Burt Syndicate to the Oil and Gas Insurance Company.

On September 29, 1989 the New York Insurance Exchange Board of Governors, pursuant to Operating Rule 8.10, reviewed the proposed sale of the Burt Syndicate.

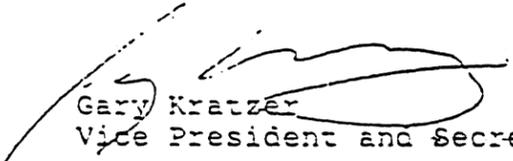
This review was precipitated by the Syndicate's notice of August 16, 1989 which enclosed a letter of intent to purchase signed by Oil and Gas Insurance Company. The Board reviewed this material and additional material requested by the Exchange (e.g. the 1988 statutory statement for Oil and Gas).

After a discussion the Board determined not to invoke its authority to disapprove such changes in interest. The Board then directed counsel to review the final sales agreement, when received, for compliance with all applicable rules and laws.

On October 6, 1989 the Exchange received a stock purchase agreement from the Syndicate which we believe complies with all applicable rules and laws.

If you have any questions, please feel free to contact me.

Sincerely,

  
Gary Kratzer  
Vice President and Secretary

GK:ad

cc: Peter H. Bickford, Esq. ✓



614-644-2640

RICHARD F. CELESTE  
Governor

STATE OF OHIO  
DEPARTMENT OF INSURANCE  
2100 STELLA COURT  
COLUMBUS 43266-0566

December 14, 1989

JoAnne Brazenor  
Supervising Insurance Examiner  
Property Companies Bureau  
New York State Insurance Department  
160 West Broadway  
New York, NY 10013

Re: Oil & Gas Insurance Company  
Proposed Merger with Furt Syndicate

Dear Ms. Brazenor:

This is to acknowledge this Department's knowledge and involvement in the proposed merger between Oil & Gas Insurance Company and the Furt Syndicate.

The Oil & Gas Insurance Company has structured the transaction under Ohio general corporate law. Oil & Gas Insurance company has followed normal insurance regulatory practice in this State and submitted the details of the proposed transaction to this Department and its Examination-Audit Division. The Department has acquiesced in the transaction and does not interpose any objection.

Very truly yours,

Kurt Weiland  
Attorney

FW:tmw

cc: Dana Rufmose, Assistant Director

OHIO  
*the best of all!*

Exhibit D

Exhibit D



STATE OF NEW YORK  
INSURANCE DEPARTMENT  
160 WEST BROADWAY  
NEW YORK, NEW YORK 10013-3393

JAMES P. CORCORAN  
SUPERINTENDENT OF INSURANCE

THE PEOPLE OF THE STATE OF NEW YORK by JAMES P. CORCORAN,  
Superintendent of Insurance, pursuant to Section 7108 of the Insurance  
Law, do hereby certify that

The Plan of Merger, executed on behalf of the Oil & Gas  
Insurance Company of Columbus, Ohio on December 11, 1989 and on behalf of  
The Burt Syndicate, Inc. on December 15, 1989 is hereby approved.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed  
the official seal of the Department at the City of New York, New York,  
this 29th day of December, 1989.

JAMES P. CORCORAN,  
SUPERINTENDENT OF INSURANCE

By: *Miriam A. Boggio*

Miriam A. Boggio  
Deputy Superintendent



Exhibit E

Exhibit E

ASSIGNMENT

This Assignment, made the 27<sup>th</sup> day of ~~October~~ <sup>December</sup> 1989, by and between The Burt Syndicate Inc., as Assignor and The Oil and Gas Insurance Company as Assignee.

WHEREAS, on August 2, 1988, Forum Reinsurance Company Limited (Forum) as Grantor, The Burt Syndicate Inc, as Beneficiary and The Bank of New York as Trustee executed a certain Trust Agreement; and

WHEREAS, the Beneficiary is about to or has entered into a Stock Purchase Agreement, whereby all the common stock of the Beneficiary will be acquired by the Oil and Gas Insurance Company ("Oil and Gas" an Ohio Corporation); and

WHEREAS, the Beneficiary and Oil & Gas are about to or have approved a Plan of Merger whereby the Beneficiary and Oil and Gas will be the constituent corporations and Oil and Gas will be the surviving corporation; and

WHEREAS, the Plan of Merger specifies that Oil and Gas shall succeed to the Beneficiary's "beneficial interest and in and to that certain trust agreement dated August 2, 1988 among Forum Reinsurance Company Limited (the "Grantor"), The

Burt Syndicate, Inc., (the "Beneficiary") and the Bank of New York (the "Trustee"); and

WHEREAS, in conjunction with the merger the Beneficiary will assign to Oil and Gas all of its rights and obligations under the Trust agreement; and

NOW THEREFORE, in consideration of the foregoing, the Assignor and the Assignee do hereby agree as follows:

The Assignor does hereby assign, transfer and convey to the Assignee all of the Assignor's rights and obligations under the Trust Agreement.

IN WITNESS WHEREOF, the Assignor and the Assignee have hereunto caused this Assignment to be signed.

THE BURT SYNDICATE INC.

By: W. Lockwood Burt  
W. Lockwood Burt  
President

Received and Accepted  
THE BANK OF NEW YORK  
As Trustee

By: [Signature]

THE OIL AND GAS  
INSURANCE COMPANY

By: [Signature]  
CIVIL ENGINEER  
PRESIDENT

CONSENT TO ASSIGNMENT

WHEREAS, on August 2, 1988, FORUM REINSURANCE COMPANY LIMITED (the "Grantor") and the BURT SYNDICATE INC. (the "Beneficiary") and THE BANK OF NEW YORK (the "Trustee") executed a certain Trust Agreement; and

WHEREAS, paragraph 17 of the Trust Agreement provides "This Trust Agreement shall be binding upon the Parties and their respective successors and assigns. No Party may assign this Agreement or any of its rights or obligations hereunder, whether by merger, consolidation, sale of all or substantially all of its assets, liquidation, dissolution or otherwise without the prior written consent of the other Parties"; and

WHEREAS, the Beneficiary is about to or has entered into a Stock Purchase Agreement, whereby all the common stock of the Beneficiary will be acquired by the Oil and Gas Insurance Company ("Oil and Gas" an Ohio Corporation); and

WHEREAS, the Beneficiary and Oil & Gas are about to have approved a Plan of Merger whereby the Beneficiary and

Oil and Gas will be the constituent corporations and Oil and Gas will be the surviving corporation; and

WHEREAS, the Plan of Merger specifies that Oil and Gas shall succeed to the Beneficiary's "beneficial interest in and to that certain trust agreement dated August 2, 1988 among Forum Reinsurance Company Limited (the "Grantor"), The Burt Syndicate, Inc., (the "Beneficiary") and The Bank of New York (the "Trustee")"; and

WHEREAS, in conjunction with the merger the Beneficiary will assign to Oil and Gas all of its rights and obligations under the Trust Agreement.

NOW THEREFORE, in consideration of the foregoing, the Grantor and the Trustee do hereby consent (but only if and to the extent the other has consented) to said assignment; provided, however, that the Trustee shall not be deemed to have notice of the same, or be required to treat any assignee as the Beneficiary prior to its actual receipt of such documents as it may reasonably require evidencing such assignment.

IN WITNESS WHEREOF, the Grantor and the Trustee have  
hereunto set their hands and seals.



FORUM REINSURANCE COMPANY LIMITED

By: [Signature]

Date: 2/13/90

[Signature]  
David A. Thirkill,  
President

THE BANK OF NEW YORK

By: [Signature]

Date: 7/23/90

VICE PRESIDENT

Exhibit F

Exhibit F

SERVICE AGREEMENT

THIS AGREEMENT, dated this \_\_\_\_\_ day of October, 1989, by and between ORMOND RE GROUP, INC. (hereinafter "ORG") and THE OIL & GAS INSURANCE COMPANY (hereinafter "OGIC").

WHEREAS, ORG is the sole owner of The Burt Syndicate, Inc. (hereinafter "Burt"), and

WHEREAS, OGIC has agreed, pursuant to a Stock Purchase Agreement effective September 29, 1989, to purchase the Common Stock of Burt, and

WHEREAS, OGIC is desirous of providing for the servicing of the continuing liabilities of Burt, and

WHEREAS, ORG is prepared to provide such services pursuant to the terms of this Agreement,

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties hereto agree as follows:

1. DUTIES OF ORG

ORG shall, on behalf of OGIC, perform the following services with respect to the reinsurance business written on the New York Insurance Exchange by Burt:

- A. Adjust, record, review and process new claims as they are presented to OGIC and all existing open claims; process incoming accounts; maintain accounts receivable for the open accounts and process new accounts receivable as required; prepare required quarterly reports to retrocessionaires and advise retrocessionaires of new losses as they are reported to OGIC; and provide such computer support and perform such other tasks relating to the recording, processing and adjustment of claims presented to OGIC as may be required to run off the business in a professional manner.

B. Assist OGIC in the reconciliation and collection of balances due from cedents and retrocessionaires

C. Assist OGIC in the preparation of commutation proposals to be made by OGIC to its cedents and retrocessionaires.

D. As directed by OGIC, present such commutation plans to OGIC's cedents and retrocessionaires, and to collect such commutation amounts as may be due OGIC.

2. FEES

A. For the services provided herein, OGIC shall pay ORG an annual fee of \$25,000, payable in quarterly installments in advance, together with any out-of-pocket expenses incurred in the performance of the duties described herein.

B. In addition to the foregoing, and provided that the gross liability of Burt, as calculated below, becomes less than \$2,367,662, OGIC shall pay ORG a contingent fee equal to 50% of the difference between \$2,367,662 and such gross liability.

The gross liability shall be the amount of \$2,267,442 adjusted for transactions subsequent to the effective date of this Agreement as follows:

1. increased by any losses paid or approved for payment,
2. increased or decreased, as the case may be, for any changes in the outstanding losses,
3. increased or decreased, as the case may be, for any changes in the incurred but not reported losses (It being understood and agreed that if OGIC and ORG are unable to agree on an acceptable IBNR, then each company will have the option of hiring an independent actuary to evaluate the IBNR. If both OGIC and ORG obtain such evaluation, the IBNR value for contingent fee calculation purposes shall be the average of the two independent estimates.)

4. increased or decreased, as the case may be, for any effects of commutations,
5. decreased by any recoveries of accounts receivable previously written off as uncollectible,
6. increased by any accounts receivable written off as uncollectible, provided such amounts are first applied against the bad-debt amount purchased by OGIC pursuant to this Agreement, and
7. decreased by any recoveries in favor of OGIC pursuant to OGIC's claim against Armco.
8. decreased by any premiums processed.

The contingent fee, if any, shall be payable as follows: One-third payable as of December 31, 1990, Two-thirds (minus previous payment) payable as of December 31, 1991, and the entire amount (minus previous payments) payable as of December 31, 1992. The first contingent fee shall be calculated and paid prior to March 31, 1991, and the calculation for subsequent years shall be handled in a similar manner. There will be no return contingent fee payable at any time.

### 3. TERM

This Agreement shall commence September 30, 1989, and shall be continuous until cancelled upon ninety (90) days written notice prior to any December 31st.

### 4. RELEASE AND INDEMNIFICATION

OGIC hereby agrees to release ORG, its officers, agents and employees from and against any and all liability to OGIC, and to indemnify and hold harmless ORG, its officers, agents and employees from and against claims, suits, judgments, damages, liabilities and lawsuits, including costs and reasonable attorney's fees, arising out of or in connection with or as a result of any action taken in good faith using ordinary care by ORG under this Agreement for a purpose which ORG reasonably believes to be in the best interest of OGIC, and in criminal actions or proceedings, had no reasonable cause to believe that its conduct was unlawful.

5. MISCELLANEOUS PROVISIONS

A. This Agreement shall be construed pursuant to the laws of the State of Ohio and all disputes arising out of or related thereto shall be litigated before the Court of appropriate jurisdiction in the State of Ohio.

B. This Agreement shall constitute the entire Agreement between the parties hereto, and may not be amended except by written amendment executed by each of the parties.

C. In addition to any of the foregoing, OGIC agrees to pay 50% (but not to exceed \$25,000) of any amounts paid by ORG (or its subsidiaries) to the New York Insurance Exchange, Inc. pursuant to the Letter Agreement between the Exchange and Burt dated October \_\_\_\_\_, 1989.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives on the date below stated.

Dated: \_\_\_\_\_

ORMOND RE GROUP, INC.

By: 

President

Dated: \_\_\_\_\_

THE OIL & GAS INSURANCE COMPANY

By: 

President

Exhibit G

**Exhibit G**

MILLER, SINGER, RAIVES & BRANDES, P. C.

ATTORNEYS AT LAW  
ONE ROCKEFELLER PLAZA  
NEW YORK, N. Y. 10020  
(212) 582-6700

TELECOPY (212) 265-0237  
TELEX 3725749

November 16, 1989

BY TELEFAX

Hon. Miriam A. Boggio  
Deputy Superintendent  
State of New York  
Insurance Department  
160 West Broadway  
New York, New York 10013-3393

Re: The First New York Syndicate Corporation

Dear Deputy Superintendent Boggio:

As the attached correspondence indicates, the shareholders of the First New York Syndicate Corporation ("FNY") have accepted an offer for the acquisition of FNY by the Oil & Gas Insurance Company ("Oil & Gas").

Our letter of November 15, 1989 to Mr. Clive Becker-Jones, President and CEO of Oil & Gas sets forth the terms and conditions to which the parties have agreed. In brief, the transaction will result in the merger of FNY into Oil & Gas through a process that will, as far as is appropriate, follow the form which is being employed with respect to the Burt Syndicate.

2 The amount which will be paid to Oil & Gas by FNY's Aggregate Excess reinsurers in respect of IBNR may warrant a brief explanation. At the request of FNY, the Tillinghast firm conducted an actuarial study of FNY's IBNR as of September 30, 1989. Tillinghast reported FNY's expected IBNR to be \$2,676,000. Tillinghast further reported the range of FNY's IBNR to be a low of \$2,422,000 to a high of \$3,123,000. Tillinghast's report was based upon FNY's non-commuted business as of September 30, 1989. Thus, it included an allocation of IBNR in respect of FNY's non-commuted liabilities with the Republic Insurance Company. However, as noted in our letter to Mr. Becker-Jones, a commutation between FNY and the Republic Insurance Company must be consummated prior to FNY's acquisition by Oil & Gas. On November 10th, the Republic accepted an offer by FNY for such a commutation. (That commutation will not require any

November 16, 1989

payment by FNY to Republic in respect of IBNR.) Accordingly, the IBNR report by Tillinghast must be reduced by approximately \$700,000 to reflect the elimination of IBNR as a result of the Republic commutation. This will result in a revised expected IBNR figure of \$1,976,000 and a revised IBNR range of \$1,722,000 to \$2,423,000.

Thus, the \$3,500,000 which will be paid by FNY's Aggregate Excess reinsurers to Oil & Gas in respect of IBNR will be \$1,500,000 more than the Tillinghast expected IBNR for FNY after the removal of IBNR attributable to the Republic Insurance Company, and approximately \$1,800,000 to \$1,100,000 more than the Tillinghast low and high range for FNY's IBNR after removal of IBNR attributable to the Republic Insurance Company.

To allow the necessary time for the preparation of the transaction documents and the obtaining of the necessary approvals, we respectfully request the Department to agree to the adjournment of its appeal from Justice Kirschenbaum's order dismissing the liquidated proceedings to the Appellate Division's March 1990 term.

If you have any questions with respect to the transaction between FNY and Oil & Gas, please do not hesitate to call us. We would appreciate an early response to our request for an adjournment of the appeal.

Very truly yours,



Steven S. Honigman

SSH:mf

cc: August L. Fietkau, Esq.  
Thomas P. Parry, Esq.  
William Simon, Esq.  
FNY Owners  
W. Lockwood Burt, Esq.  
Robert M. Raives, Esq.

Exhibit H

Exhibit H



STATE OF NEW YORK  
INSURANCE DEPARTMENT  
160 WEST BROADWAY  
NEW YORK, NEW YORK 10013-3393

JAMES P. CORCORAN  
SUPERINTENDENT OF INSURANCE

RICHARD G. LISKOV  
DEPUTY SUPERINTENDENT AND  
GENERAL COUNSEL

January 23, 1990

Paul W. Collins, Esq.  
The Oil & Gas Insurance Co.  
101 Green Meadows Drive South  
P.O. Box 1839  
Columbus, Ohio 43216

Re: Matter of Corcoran -  
First New York Syndicate  
Index No. 46341/86

Dear Mr. Collins:

This is in response to Mr. Honigman's request of January 22, 1990. In the event that the First New York Syndicate Corporation concludes a merger with The Oil & Gas Insurance Company so that the First New York Syndicate Corporation no longer exists as a separate entity and, provided that such merger meets the statutory and regulatory requirements applicable to such transaction so as to enable this Department to approve same, then the above captioned proceeding will become moot and the appeal now pending may be withdrawn.

Very truly yours,

*Joan Siegel*  
Joan Siegel  
Senior Attorney

cc: Steven Honigman, Esq.

Exhibit I

**REINSURANCE COMMUTATION  
AND RELEASE AGREEMENT**

This Reinsurance Commutation and Release Agreement (the "Commutation Agreement") is made and effective as of 12:01 a.m., December 31, 1989 (the "Effective Date"), by and among the First New York Syndicate Corporation, a New York corporation having its corporate offices at 3 East 54th Street, 12th Floor, New York, New York 10022 (the "Company"), and Arkwright Mutual Insurance Company ("Arkwright"), Capital Assurance Company ("Capital"), Gjensidige Norsk Skadeforskring ("Gjensidige"), Nouvelle Compagnie de Reassurances ("Nouvelle"), Pearl Assurance Public Limited Co. ("Pearl") and Pohjola Group ("Pohjola") (singly, each is referred to as a "Retrocessionaire" and collectively, all are referred to as the "Retrocessionaires").

WHEREAS, the Company and the Retrocessionaires have heretofore entered into an Aggregate Excess of Loss Retrocession Treaty, effective 12:01 a.m., May 17, 1988 (the "Aggregate Excess Treaty"); and

WHEREAS, the Company and the Retrocessionaires wish to fully and finally settle, commute, release and discharge any and all of their respective obligations under the Aggregate Excess Treaty, and enter into mutual releases related thereto;

NOW THEREFORE, in consideration of the mutual promises and covenants set forth herein, and in reliance upon the representations, warranties, conditions and covenants contained in this agreement, the Company and the Retrocessionaires agree as follows:

1. The execution and delivery of this Commutation Agreement and any and all documents to which any of the parties are entitled under the terms hereof, and the delivery and payment of the funds and the consummation and performance of the releases, commutations and discharges provided herein (the "Closing"), shall take place immediately preceding the closing of the Stock Purchase Agreement pursuant to which the Oil & Gas Insurance Company will purchase the shares of the Company (the "Stock Purchase Agreement") in the offices of Forum Re Group Inc. at 30 Monument Square, Concord, Massachusetts at such time and date as may be mutually agreed to by the parties (such time and date are herein referred to as the "Closing Date").

2. At the Closing, each Retrocessionaire shall deliver to W. Lockwood Burt, Executive Vice President of the Company, who is hereby authorized to receive the same on behalf of the Company, its certified check (the "Commutation Check") in payment of its proportional share, under the Aggregate Excess Treaty, of: (a) the total amount of claims and commutations paid or approved for payment and loss adjustment expenses charged through and including 12:01 a.m., December 29, 1989 (the "Balance Payable"); (b) the total amount of outstanding losses and loss adjustment expenses on the Company's books as of 12:01 a.m., December 29, 1989 (the O/S Balance"); and (c) \$3,500,000 in respect of Incurred But Not Reported Losses subject to the Aggregate Excess Treaty ("IBNR"). The Balance Payable is \$817,031.66. The O/S Balance is \$2,055,536.00. The Retrocessionaires' Commutation Checks shall be in the following amounts:

(i)	<u>Arkwright</u>	(15.72%)	
	Balance Payable	-	\$ 128,437.38
	O/S Balance	-	\$ 323,130.26
	IBNR	-	<u>\$ 550,200.00</u>
	Total	-	\$1,001,767.64
(ii)	<u>Capital</u>	(12.73%)	
	Balance Payable	-	\$ 104,008.13
	O/S Balance	-	\$ 261,669.73
	IBNR	-	<u>\$ 445,550.00</u>
	Total	-	\$ 811,227.86

(iii) Gjensidige (20.95%)

Balance Payable	-	\$ 171,168.13
O/S Balance	-	\$ 430,634.79
IBNR	-	\$ 733,250.00
Total	-	\$1,335,052.92

(iv) Pearl (20.95%)

Balance Payable	-	\$ 171,168.13
O/S Balance	-	\$ 430,634.79
IBNR	-	\$ 733,250.00
Total	-	\$1,335,052.92

(v) Pohjola (28.08%)

Balance Payable	-	\$ 188,570.91
O/S Balance	-	\$ 474,417.71
IBNR	-	\$ 807,800.00
Total	-	\$1,470,788.62

(vi) Nouvelle (6.57%)

Balance Payable	-	\$ 53,678.98
O/S Balance	-	\$ 135,048.72
IBNR	-	\$ 229,950.00
Total	-	\$ 418,677.70

3. Upon the Company's receipt of the Commutation checks from Gjensidige, Pearl, Pohjola and Nouvelle, the Company shall immediately deliver to Steven S. Honigman ("Counsel"), as counsel for said Retrocessionaires, who is hereby authorized to receive the same, irrevocable instructions (the "LOC instructions") to the banking institutions with which said Retrocessionaires maintain the letters

of credit required from each of them under Article XIV of the Aggregate Excess Treaty, directing those institutions to immediately cancel the letters of credit.

4. Upon the Company's receipt of each Retrocessionaire's Commutation Check, that Retrocessionaire, its predecessors, parents, affiliates, agents, officers, directors, shareholders and assigns shall thereupon be fully and finally released and discharged from any and all present and future obligations, adjustments, executions, offsets, actions, causes of action, suits, debts, sums of money, accounts, reckonings, bonds, bills, covenants, contracts, controversies, agreements, promises, damages, judgments, claims, demands, liabilities and/or losses whatsoever, all whether known or unknown, which the Company, and its successors and assigns, whether by merger or otherwise, ever had, now have, or hereafter may have, whether grounded in law or in equity, in contract or in tort, against that Retrocessionaire by reason of any matter whatsoever pursuant to, under, arising out of or related to the Aggregate Excess Treaty, it being the intention of the parties that this release shall operate as a full and final release, discharge and settlement of the Retrocessionaire's current and future liabilities to the Company under said Aggregate Excess Treaty.

5. Simultaneously with the Retrocessionaires' delivery of the Commutation Checks to the Company, each Retrocessionaire shall fully and finally release and discharge the Company, its predecessors, parents, affiliates, agents, officers, directors, shareholders and assigns from any and all present and future obligations, adjustments, executions, offsets, actions, causes of action, suits, debts, sums of money accounts, reckonings, bonds, bills, covenants, contracts, controversies, agreements, promises, damages, judgments, claims, demands, liabilities and/or losses whatsoever, all whether known or unknown, which the Retrocessionaire, and its successors and assigns, whether by merger or otherwise, ever had, now have, or hereafter may have, whether grounded in law or in equity, in contract or in tort, against the Company by reason of any matter whatsoever pursuant to, under, arising out of or related to the Aggregate Excess Treaty, it being the intention of the parties that this release shall operate as a full and final release, discharge and settlement of the Company's current and future liabilities to the Retrocessionaire under said Aggregate Excess Treaty.

6. No release given or received by any party hereto shall alter, increase or diminish any right or obligation of that party under the Stock Purchase Agreement.

7. This Commutation Agreement and the rights, duties and obligations set forth herein shall inure to the benefit of and be binding upon any and all predecessors, successors, affiliates, officers, directors, employees, parents, subsidiaries, stockholders, liquidators, receivers, assigns and legal representatives of the parties hereto.

8. The parties hereto expressly warrant and represent: (a) that they are corporations in good standing in their respective places of domicile; (b) that the execution of this Commutation Agreement and the performance of all acts and obligations required herein are fully and duly authorized by the directors of each of them; (c) that the person or persons executing this Commutation Agreement have the lawful, necessary and appropriate authority to do so; (d) that there are no pending agreements, transactions, or negotiations to which any of them are a party that would render this Commutation Agreement or any part thereof void, voidable, or unenforceable; and (e) that no authorization, consent or approval of any entity is required to make this Commutation Agreement valid and binding upon any of them, or, if any such authorization, consent or approval is required, that such authorization, consent or approval will be obtained in writing and submitted to all other parties on or before the Closing Date.

9. This Commutation Agreement shall be governed by and construed in accordance with the substantive laws of the State of New York.

10. This Commutation Agreement contains the entire agreement among the parties and supersedes all prior agreements written or oral with respect to the subject matter.

11. This Commutation Agreement may be amended, superseded, cancelled, renewed or extended, and the terms hereof may be waived, only by a written instrument signed by each of the parties or, in the case of a waiver, by the party waiving compliance. No delay on the part of any party in exercising any right, power or privilege hereunder shall operate as a waiver thereof. Nor shall any waiver on the part of any party of any such right, power or privilege, nor any single or partial exercise of any such right, power or privilege, preclude any further exercise thereof or the exercise or any other such right, power or privilege. The rights and remedies herein provided are cumulative and are not exclusive of any rights or remedies that any party may otherwise have at law or in equity.

12. Any suit, claim, action or proceeding arising out of or relating to this Commutation Agreement, or for the enforcement of any judgment or order entered by any court in

respect thereof, shall be brought in the United States District Court for the Southern District of New York or, in the event such court does not accept jurisdiction, in a State court of competent jurisdiction in New York, New York, and each of the parties hereto hereby submits to the jurisdiction of either of such courts. Each of the parties hereto irrevocably consents to the jurisdiction of the courts referred to in this Section in connection with any matter arising out of or relating to this Commutation Agreement, irrevocably waives any objection which it may now or hereafter have to the laying of venue of any such suit, claim, action or proceeding in the courts referred to in this Section, and further irrevocably waives any claim that any such suit, claim, action or proceedings brought in any such court has been brought in an inconvenient forum.

13. This Commutation Agreement, and each of the rights and obligations set forth herein, shall not be assignable by any party without the written consent of the other parties, and any such non-consented assignment shall be void.

14. Nothing in this Commutation Agreement is intended or shall be construed to give any person, other than the parties hereto, any legal or equitable right, remedy or claim under or in respect of this Commutation Agreement or any provision contained herein.

15. This Commutation Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same instrument. Each counterpart may consist of a number of copies hereof each signed by less than all, but together signed by all of the parties hereto.

16. The parties hereby agree to execute promptly any and all supplemental agreements, releases, affidavits, waivers and other documents of any nature or kind which any other party may reasonably require in order to implement the provisions or objectives of this Commutation Agreement.

IN WITNESS WHEREOF, the parties have executed this Commutation Agreement effective as of the Effective Date.

THE FIRST NEW YORK  
SYNDICATE CORPORATION

By: *Kenneth W. I. Fletcher*

Name: KENNETH W. I. FLETCHER

Title: PRESIDENT

Date: \_\_\_\_\_

ARKWRIGHT MUTUAL INSURANCE  
COMPANY

By: *J. C. Wright*  
Name: Jonathan C. Wright  
Title: Vice President and Controller  
Date: February 26, 1990

CAPITAL ASSURANCE COMPANY

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

GJENSIDIGE NORSK  
SKADEFORSKRING

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

NOUVELLE COMPAGNIE DE  
REASSURANCES

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

ARKWRIGHT MUTUAL INSURANCE  
COMPANY

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

CAPITAL ASSURANCE COMPANY, INC.

By: Reba C. Rogers

Name: Reba C. Rogers

Title: Vice President, CFO & Treasurer

Date: 2/27/90

GJENSIDIGE NORSK  
SKADEFORSKRING

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

NOUVELLE COMPAGNIE DE  
REASSURANCES

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

ARKWRIGHT MUTUAL INSURANCE  
COMPANY

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

CAPITAL ASSURANCE COMPANY

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

GJENSIDIGE NORSK  
SKADEFORSKRING

By: 

Name: Lae, Leif R.

Title: Dep. Man. Director

Date: 21. Feb 90

NOUVELLE COMPAGNIE DE  
REASSURANCES

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

ARKWRIGHT MUTUAL INSURANCE  
COMPANY

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

CAPITAL ASSURANCE COMPANY

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

GJENSIDIGE-NORSK  
SKADEFORSKRING

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

NOUVELLE COMPAGNIE DE  
REASSURANCES

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

Name: Peter Kamer Philippe Mogeon

Title: President Senior Vice President

Date: 21/1/90

PEARL ASSURANCE PUBLIC LIMITED  
COMPANY

By: 

Name: KENNETH W.I. FLETCHER

Title: GENERAL MANAGER - GENERAL BUSINESS

Date: 2/27/43

POHJOLA GROUP

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

PEARL ASSURANCE PUBLIC LIMITED  
COMPANY

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

POHJOLA GROUP

By: *Kari Pellikka*

Name: Kari Pellikka

Title: Director

Date: 21st February 1990

Exhibit J

## STOCK PURCHASE AGREEMENT

This Stock Purchase Agreement (the "Agreement") is made and effective as of 12:01 a.m., December 31, 1989 (the "Effective Date"), by and among The First New York Syndicate Corporation, a New York corporation having its corporate offices at 3 East 54th Street, New York, NY 10022 (the "Company"), Arkwright Mutual Insurance Company, Gjensidige Norsk Skadeforskring, Mutual Fire, Marine and Inland Insurance Company ("Mutual Fire"), Nouvelle Compagnie de Reassurances, Ormond Reinsurance Company, Pearl Assurance Public Limited Co., Pohjola Insurance Company Ltd. and Ryder System, Inc. (collectively, the "Shareholders"); and The Oil & Gas Insurance Company, an Ohio corporation having its corporate offices at 101 Green Meadows Drive South, Westerville, Ohio 43216 (the "Buyer").

WHEREAS, the Company has ceased writing new or renewal reinsurance or insurance as an insurance syndicate Underwriting Member of the New York Insurance Exchange, (the "Exchange"); and

WHEREAS, the Buyer desires to purchase all of the issued and outstanding Common Stock of the Company and the Shareholders each desire to sell all of their Common Stock to the Buyer.

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth herein and in the exhibits hereto, and in reliance upon the representations, warranties, conditions and covenants contained in this Agreement, the Company, the Shareholders and the Buyer do hereby agree as follows:

### ARTICLE I. DESCRIPTION OF PURCHASE.

Section 1.01. The Common Stock. Pursuant to this Agreement, each Shareholder agrees to sell, and the Buyer agrees to purchase, all of the Common Stock of the Company owned by each Shareholder (the "Common Stock"), the total of which is equal to all of the Common Stock issued by the Company; provided, however, that the sale by Mutual Fire, and the purchase by the Buyer, of the shares owned by Mutual Fire, is subject to and shall be consummated upon, the approval of said transaction by the Court before which rehabilitation proceedings with respect to Mutual Fire are pending.

### ARTICLE II. PURCHASE PRICE.

Section 2.01. The Purchase Price. For the Common Stock of the Company owned by each Shareholder, the Buyer shall pay to that shareholder the sum of One Hundred Thousand Dollars (\$100,000.00), for a total purchase price of Eight Hundred Thousand Dollars (\$800,000.00), at the time of closing, (as hereinafter defined).

ARTICLE III. REPRESENTATIONS AND WARRANTIES OF THE COMPANY AND SHAREHOLDERS.

The Shareholders and the Company hereby represent and warrant to the Buyer as follows:

Section 3.01. Organization and Standing of the Company. The Company is a corporation duly organized, validly existing and in good standing under the laws of New York with corporate power and authority to own and operate its business.

Section 3.02. Authorization. The Company and each Shareholder have corporate power and authority to enter into this Agreement and to perform its obligations hereunder. Assuming the due execution and delivery by the Buyer of this Agreement and due and timely performance by the Buyer of all obligations required to be performed by it, this Agreement will be a valid and binding obligation of the Company, and each Shareholder, enforceable against each of them in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, moratorium or other similar laws affecting creditors' rights generally or by the principles governing the availability of equitable remedies.

Section 3.03. Taxes. The Company has filed or will file all tax returns and reports required to be filed by it in connection with new or renewal reinsurance or insurance written by it as an Underwriting Member of the Exchange (the "Business") and has paid or will pay all Taxes shown on said returns and reports as required to be paid in connection with the Business, during or with respect to any period which ends on or before the Effective Date (including, in the case of a taxable period that includes the Effective Date, the part of such period which ends on the Effective Date). For the purposes of this Agreement, "Taxes" (or "Tax" as the context may require) means all federal, state, county, local, foreign and other net income or premium taxes, and includes interest, additions to tax and penalties with respect thereto.

Section 3.04. Title to the Common Stock. Each Shareholder has good and marketable title to the Common Stock which it will sell to the Buyer free from, and clear of, any mortgage, lien, claim, encumbrance, security interest, charge or other objection other than mortgages, liens, claims, encumbrances, security interests, charges, title or other objections which in the aggregate do not have a Material Adverse Effect. For the purposes of this Agreement, "Material Adverse Effect" means any effect which will have a determinable material adverse economic effect on the business of the Company taken as a whole.

**Section 3.05. Actions and Proceedings.** Except as set forth in Schedule 3.05 hereto, the Company and the Shareholders are aware of no outstanding orders, decrees or judgments by or with any court, governmental agency, regulatory body or arbitration tribunal to which the Company is a party which, individually or in the aggregate, would have, in the reasonable judgment of its counsel, a Material Adverse Effect. Except as set forth in Schedule 3.05, there are, to the best knowledge of the Company and the Shareholders, no actions, suits or claims, or legal, administrative or arbitration proceedings, pending or threatened against the Company in connection with the Business which, if adversely determined, would have, in the reasonable judgment of its counsel, a Material Adverse Effect.

**Section 3.06. No Conflict or Violation.** The execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby in accordance with the respective terms and conditions hereof will not (a) violate any provision of the Articles of Incorporation, By-Laws or other charter or organizational document of the Company; (b) to the best knowledge of the Company and the Shareholders, violate, conflict with or result in the breach of any of the terms of, result in any modification of the effect of, otherwise give any other contracting party the right to terminate, or constitute (or with notice or lapse of time or both, constitute) a default under, any contract or other agreement to which the Company or any Shareholder is a party or by or to which they or any of the Common Stock may be bound or subject and which would have a Material Adverse Effect; (c) to the best knowledge of the Company and the Shareholders, violate any order, judgment, injunction, award or decree of any court, arbitrator or governmental or regulatory body against, or binding upon, or any agreement with, or condition imposed by, any governmental or regulatory body, foreign or domestic, binding upon the Company, or upon the policies, the Common Stock, or the Business (other than those violations which in the aggregate would not have a Material Adverse Effect); or (d) to the best knowledge of the Company and the Shareholders, violate any statute, law or regulation of any jurisdiction as such statute, law or regulation relates to the Company, or to the policies, the Common Stock, or the Business (other than those violations which in the aggregate would not have a Material Adverse Effect).

**Section 3.07. Consents and Approvals.** All necessary consents and approvals required as a prerequisite to the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby in accordance with the terms hereof have been obtained prior to the closing by the Company and each of the Shareholders.

**Section 3.08. Broker's and Finder's Fees.** No agent, broker, finder or other Person acting on behalf of the Company or any

Shareholder is or will be entitled to any commission or broker's or finder's fees from any of the parties hereto in connection with this Agreement or the transactions contemplated hereby.

Section 3.09. Compliance with Laws. To the best knowledge of the Company and the Shareholders, the Company is in compliance with (a) all applicable orders, judgments, injunctions, awards, decrees to which the Company is a party affecting the Business for which noncompliance would have a Material Adverse Effect; and (b) all federal, state, local or foreign laws, ordinances, or regulations or any other requirements of any governmental or regulatory body, court or arbitrator applicable to the Business for which noncompliance would have a Material Adverse Effect, and the Company has received no written notice that any such noncompliance is being alleged other than an appeal taken by the Superintendent of Insurance from an Order, dated December 29, 1988, in the proceedings (the "FNY Proceedings") entitled, In the Matter of the Application of James P. Corcoran, as Superintendent of Insurance of the State of New York, for an Order to take possession of and liquidate the business of and dissolve the First New York Syndicate Corporation, Index No. 46341/86, issued by the New York Supreme Court dismissing said proceedings with prejudice, which appeal is currently pending before the Appellate Division of the New York Supreme Court.

Section 3.10. Insurance Business. All policies of insurance and reinsurance issued by the Company in connection with the Business as now in force are, to the extent required under applicable law, on forms approved by applicable insurance regulatory authorities or which have been filed and not objected to by such authorities within the period provided for objection. Any premium rates established in connection with the policies and the Business which are required to be filed with or approved by insurance regulatory authorities have been so filed or approved by insurance regulatory authorities and the premiums charged conform thereto. The foregoing representations contained in this Section 3.10 shall not apply with respect to the absence of any approval or filing which would not have a Material Adverse Effect.

Section 3.11. Regulatory Filings. The Company has filed all reports, statements, documents, registrations, filings or submissions required to be filed in connection with the Business, as well as in connection with all of the transactions contemplated hereby, and with any governmental or regulatory body, in each case other than any filings the failure of which to make would not have a Material Adverse Effect. All such registrations, filings and submissions were in compliance in all material respects with applicable law when filed or as amended or supplemented, and no deficiencies have been asserted by any such governmental or regulatory body with respect to such

registrations, filings or submissions that have not been satisfied except such that would not have a Material Adverse Effect.

#### ARTICLE IV. REPRESENTATIONS AND WARRANTIES OF THE BUYER.

The Buyer hereby represents and warrants to the Company and each Shareholder as follows:

Section 4.01. Organization and Standing of the Buyer. The Buyer is a corporation duly organized, validly existing and in good standing under the laws of the State of Ohio with corporate power and authority to own and operate the Company and to carry on the Business.

Section 4.02. Authorization. The Buyer has all corporate power and authority to enter into this Agreement, and the Buyer has all corporate power and authority to perform its obligations hereunder. The execution and delivery by the Buyer of this Agreement and the performance by the Buyer of its obligations hereunder have been duly authorized. Assuming the due execution and delivery by the Company and each Shareholder of this Agreement and due and timely performance by the Company and each Shareholder of all obligations required to be performed by them, and due and timely performance by each Reinsurer (as therein defined) of all obligations required under the Reinsurance Commutation and Release Agreement to be executed and performed simultaneously with this Stock Purchase Agreement, this Agreement will be a valid and binding obligation of the Buyer, enforceable against it in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, moratorium or other similar laws affecting creditors' rights generally or by the principles governing the availability of equitable remedies.

Section 4.03. Actions and Proceedings. The Buyer is aware of no outstanding orders, decrees or judgments by or with any tribunal, or any actions, suits or claims or other legal or administrative proceedings pending or threatened against or involving the Buyer, which could, individually or in the aggregate, interfere with the Buyer's performance of this Agreement.

Section 4.04. No Conflict or Violation. The execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby in accordance with the terms and conditions hereof will not (a) violate any provision of the Articles or Certificate of Incorporation, By-Laws or other charter or organizational document of the Buyer; (b) violate, conflict with or result in the breach of any of the terms of, result in any modification of the affect of, otherwise give any other contracting party the right to terminate, or constitute (or

with notice of lapse of time or both, constitute) a default under, any contract or other agreement to which the Buyer is a party or by or to which it or any of its assets or properties may be bound or subject; (c) to the best knowledge of the Buyer, violate any order, judgement, injunction, award or decree of any court, arbitrator or governmental or regulatory body against, or binding upon, or any agreement with, or condition imposed by, any governmental or regulatory body, foreign or domestic, binding upon the Buyer, or upon the securities, assets or business of the Buyer; or (d) to the best knowledge of the Buyer, violate any statute, law or regulation of any jurisdiction as such statute, law or regulation relates to the Buyer or to the securities, properties or business of the Buyer.

Section 4.05. Consents and Approval. The execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby in accordance with the terms hereof are subject to the Buyer obtaining the consent, approval, acquiescence or other action constituting or indicating the absence of opposition of The Insurance Department of the State of Ohio and making any filings with or giving notice to, any organization, or other regulatory body that is required, and obtaining any consent, approval, acquiescence or other action constituting or indicating the absence of objection by that body.

Section 4.06. Brokers and Financial Advisers. No broker, finder or financial adviser has acted directly or indirectly as such for, or is entitled to any compensation from, the Buyer in connection with this Agreement or the transactions contemplated hereby.

Section 4.07. Certain Licensing Matters. The Buyer is duly licensed, qualified or otherwise authorized to conduct the Business, and is in good standing, in all jurisdictions in which the Business is conducted on the Closing date.

#### ARTICLE V. COVENANTS.

The Company, the Shareholders and the Buyer, as appropriate, covenant as follows, except as otherwise consented to or approved in writing by an authorized officer of the other or as required by this Agreement.

Section 5.01. Continued Access by the Company. At any time subsequent to the Effective Date, the Buyer shall allow and enable the Company and the Shareholders, during regular business hours, through their employees and representatives, to examine and make copies of the files in the Buyer's possession or control pertaining to any matters identified by the Company or any Shareholder, for any reasonable business purpose including, but not limited to, the preparation or examination of Tax returns and financial statements and the conduct of any litigation or

regulatory dispute resolution, whether pending or threatened. Access to such files shall be at the Company's or Shareholder's expense and may not unreasonably interfere with the Buyer's business operations.

**Section 5.02. Consents and Best Efforts.** The Company, the Shareholders and the Buyer will cooperate to take all reasonable actions required to obtain all consents, approvals and agreements of, and to give and make all notices and filing with, any governmental authorities and regulatory agencies, necessary to authorize, approve and permit the consummation of the transactions contemplated by this Agreement.

**Section 5.03. Further Assurances.** Subject to the terms and conditions herein provided, the Company, the Shareholders and the Buyer will use their best efforts to take, or cause to be taken, all action or do, or cause to be done, all things or execute any documents necessary, proper or advisable, to consummate and to make effective the transactions contemplated by this Agreement.

**Section 5.04. Expenses.** Except as otherwise specifically provided herein, the parties to this Agreement shall bear their respective expenses incurred in connection with the preparation, execution and performance of this Agreement and the transactions contemplated hereby, including, without limitation, all fees and expenses of agents, representatives, counsel, actuaries and accountants.

**Section 5.05. Notification of Certain Matters.** The Company and the Shareholders on the one hand, and the Buyer, on the other hand, will give prompt notice to the other after they have obtained knowledge of the occurrence, or failure to occur, of any event which occurrence or failure would or would be likely to cause any of their respective representations or warranties contained in this Agreement to be untrue or incorrect in any material respect.

**Section 5.06. The Company's, Shareholders' and Buyer's Right to Cure Breaches.** The Company, each of the Shareholders and the Buyer shall have the right for a reasonable period to seek to cure any breach or potential breach of any representation made by them in this Agreement. Each party shall cooperate with the other parties in connection with any of their attempts to cure any such breach, or potential breach, including but not limited to providing the other party, its employees and representatives, access to any necessary books and records and making available any necessary personnel.

**Section 5.07. Transfer of Stock Certificate.** At the Closing (as hereinafter defined), each Shareholder shall deliver to the Buyer its Stock Certificates of the Company duly endorsed

to transfer full and complete title of the shares to the Buyer; provided, however, that the shares owned by Mutual Fire shall be delivered to the Buyer, and the purchase price of One Hundred Thousand Dollars (\$100,000.00) payable for such shares shall be delivered to Mutual Fire, at a closing to be held within three business days after final approval of said transaction by the Court before which rehabilitation proceedings with respect to Mutual Fire are pending. Immediately after the Closing, which shall include the consummation and performance of the Reinsurance Commutation and Release Agreement, the Company will be merged with and into the Buyer and the Buyer will have no right to the name "The First New York Syndicate Corporation".

#### ARTICLE VI. THE CLOSING.

Section 6.01. The Closing Date. The execution and delivery of the Agreement and any documents, certificates or opinions to which either of the parties is entitled under ARTICLE VII and VIII, payment of funds due under ARTICLE II and consummation and performance of the Reinsurance Commutation and Release Agreement (such execution, delivery, and payments and performance herein referred to as the "Closing") shall take place on February 26, 1990 at 11:00 a.m. in the offices of Forum Re Group Inc. at 30 Monument Square, Concord, Massachusetts or at such time and date as may be mutually agreed to by the parties hereto (such time and date herein referred to as the "Closing Date").

#### ARTICLE VII. CONDITIONS PRECEDENT TO THE OBLIGATION OF THE BUYER TO CLOSE.

The obligation of the Buyer to enter into and complete the Closing is subject to the fulfillment on or prior to the Closing Date of the following conditions, any one or more of which may be waived in writing by it to the extent permitted by law.

Section 7.01. Representations and Covenants. The representations and warranties of the Company and the Shareholders contained in this Agreement shall be true and correct in all material respects on and as of the Closing Date with the same force and effect as though made on and as of the Closing Date, except that any such representations and warranties that are given as of a particular date and relate solely to a particular date or period shall be true and correct in all material respects as of such date or period. The Company and the Shareholders shall have performed and complied in all material respects with all covenants and agreements required by this Agreement to be performed or complied with by the Company or the Shareholders on or prior to the Closing Date.

**Section 7.02. Approval by New York Insurance Exchange and New York Insurance Department.** In addition to the approvals and consents required to be obtained by the Company prior to the Closing, the Company shall obtain prior to the Closing from the Exchange any and all required approvals of the transactions contemplated by this Agreement.

The Company shall also obtain an opinion by its counsel that the provisions of decretal paragraph 14 of the Order issued on May 17, 1988 in the FNY proceedings is sufficient to release the Company from any liability to the Exchange. The Company shall also obtain all necessary and appropriate approvals and consents from the New York Insurance Department (the "Department") regarding this matter as well as the Department's approval of the transactions contemplated by this Agreement and, if necessary, the Reinsurance Commutation and Release Agreement. The Company shall further obtain, prior to the Closing, the approval and consent, or other action constituting or indicating the absence of opposition, if such is deemed necessary, of the N.Y.I.E. Security Fund, Inc., as well as that of any other regulatory body whose approval and consent may be required, to the transactions contemplated by this Agreement and the Reinsurance Commutation and Release Agreement. Each and every consent and approval required by this Section 7.02 shall be attached hereto as an Exhibit and made a part hereof.

**Section 7.03. Instruments of Conveyance.** The Company and the Shareholders shall deliver to the Buyer such deeds, bills of sale, endorsements, assignments and other good and sufficient instruments of conveyance and transfer as shall be effective to vest in the Buyer all of the right, title and interest of the Shareholders in and to the Common Stock as provided in this Agreement.

**Section 7.04. Litigation.** No action, suit or proceeding shall have been instituted and be continuing or be threatened, by any governmental or regulatory body or any other person or entity to restrain, modify or prevent the carrying out of the transactions contemplated by this Agreement, or to seek damages in connection with such transactions or the Business, that has or is reasonably likely to have a Material Adverse Effect; provided, however, that in the case of any pending or threatened action, suit or proceeding, this condition shall be deemed satisfied if the Company agrees in writing to indemnify the Buyer with respect to such action, suit or proceeding pursuant to the provisions of Article X.

**Section 7.05. Governmental and Regulatory Consents and Approvals.** All permits and approvals from governmental and regulatory bodies required for the execution and performance of this Agreement shall have been obtained and shall be in full force and effect and without conditions or limitations which



unreasonably restrict the ability of the parties hereto to perform this Agreement, and the Buyer shall have been furnished with appropriate evidence, reasonably satisfactory to it and its counsel, of the granting of such permits. There shall not have been any action taken by any court, governmental or regulatory body prohibiting or making illegal on the Closing Date the transactions contemplated by this Agreement. The waiting periods, if any, required by any regulatory agencies shall have expired.

Section 7.06. Other Documents. The Company shall have provided the Buyer and its counsel with other certificates or other documents customary for transactions of this type relating to the Business in connection with the Closing that the Buyer may reasonably request.

ARTICLE VIII. CONDITIONS PRECEDENT TO THE OBLIGATION OF THE COMPANY AND SHAREHOLDERS TO CLOSE.

The obligation of the Company and the Shareholders to enter into and complete the Closing is subject to the fulfillment on or prior to the Closing Date of the following conditions, any one or more of which may be waived by them to the extent permitted by law.

Section 8.01. Representations and Covenants. The representations and warranties of the Buyer contained in this Agreement shall be true and correct in all material respects on and as of the Closing Date with the same force and effect as though made on and as of the Closing Date, except that any such representations and warranties that are given as of a particular date and related solely to a particular date or period shall be true and correct in all material respects as of such date or period. The Buyer shall have performed and complied in all material respects with all covenants and agreements required by this Agreement to be performed or complied with by the Buyer on or prior to the Closing Date.

Section 8.02. Litigation. No action, suit or proceeding shall have been instituted and be continuing or be threatened by any governmental or regulatory body to restrain, modify or prevent the carrying out of the transactions contemplated by this Agreement, or to seek damages in connection with such transactions.

Section 8.03. Governmental and Regulatory Consents and Approvals. All permits and approvals from governmental and regulatory bodies required for the execution and performance of this Agreement shall have been obtained and shall be in full force and effect and without conditions or limitations which unreasonably restrict the ability of the parties hereto to perform this Agreement, and the Company and the Shareholders

shall have been furnished with appropriate evidence, reasonably satisfactory to them and their counsel, of the granting of such permits. There shall not have been any action taken by any court, governmental or regulatory body prohibiting or making illegal on the Closing Date the transactions contemplated by this Agreement. The waiting periods, if any, required by any regulatory agencies shall have expired.

Section 8.04. Other Documents. The Buyer shall have provided the Company, the Shareholders and their counsel with such other certificates or other documents customary for transactions of this type in connection with the Closing that they may reasonably request.

Section 8.05. Financial Condition of the Buyer. There shall have occurred no event materially and adversely affecting the Buyer or its operations, financial condition or ability to perform any of the obligations set forth in this Agreement.

#### ARTICLE IX. SURVIVAL OF REPRESENTATIONS AND WARRANTIES.

Section 9.01. Survival of Representations and Warranties. Notwithstanding any right of the Buyer fully to investigate the affairs of the Company and the accuracy of any representations and warranties of the Company and the Shareholders, or any right of the Company and the Shareholders, fully to investigate the accuracy of the representations and warranties of the Buyer, and notwithstanding any knowledge of facts determined or determinable by the Buyer, the Company or the Shareholders, as the case may be, pursuant to such investigation or right of investigation, the Buyer, the Company and the Shareholders, as the case may be, have the right to rely fully upon the representations, warranties, covenants, and agreements of the Company, the Shareholders or the Buyer, as the case may be, contained in this Agreement. All such representations, warranties, covenants and agreements shall survive the Closing hereunder and, except as otherwise specifically provided in this Agreement, shall thereafter terminate and expire on December 31, 1990 with respect to any General Claim (hereinafter defined), or for any other purpose, based upon, arising out of or otherwise in respect of any fact, circumstance, action or proceeding of which the party asserting such claim shall have given no notice complying with Section 10.02 on or prior to December 31, 1990. Except as set forth in clauses (i) and (ii) of Subsection (a) or Subsection (b) as the case may be, of Section 10.01 neither the Company, the Shareholders or the Buyer, as the case may be, shall be liable with respect to any General Claim in respect of which the party asserting such General Claim has not given to the other party written notice on or prior to December 31, 1990. However, in no case shall the liability of any Shareholder exceed the sum of \$100,000.

**Section 9.02. Definition of General Claim.** "General Claim" means any claim based upon, arising out of or otherwise in respect of any misrepresentation or any breach of any representation, warranty, covenant or agreement of the Company or the Shareholders on the one hand, or the Buyer on the other hand, contained in this Agreement.

**ARTICLE X. INDEMNIFICATION.**

**Section 10.01. Obligation to Indemnify.**

(a) The Company and the Shareholders agree to indemnify, defend and hold harmless the Buyer (and its directors, officers, employees, affiliates and consented assigns) from and against all claims, losses, liabilities, damages, deficiencies, costs or expenses (including interest, penalties and reasonable attorneys' fees and disbursements) ("Losses"), based upon: (i) a General Claim against the Company and the Shareholders subject to the limitations contained in Article IX; (ii) any Tax liability assessed against the Buyer which related to Tax returns filed by the Company for any taxable period ending on or prior to the Effective Date or which is incurred as a result of events which occur prior to the Effective date; and (iii) any fees or commissions incurred by the Company in connection with the transactions contemplated by this Agreement. However, in no case shall the liability of any Shareholder exceed the sum of \$100,000.

(b) The Buyer agrees to indemnify, defend and hold harmless the Company and each of the Shareholders, (and their directors, officers, employees, affiliates, prior affiliates and assigns) from and against all Losses, based upon: (i) a General Claim brought by the Company or any of the Shareholders against the Buyer subject to the limitations contained in Article IX; (ii) any Tax liability assessed against the Company which relates to Tax returns filed by the Buyer for any taxable period ending after the Effective Date or which is incurred as a result of events which occur after the Effective Date; (iii) any claims, actions, or proceedings relating to; (x) the Business; (y) any other business of the Buyer; and (iv) and fees or commissions incurred by the Buyer in connection with the transactions contemplated by this Agreement.

**Section 10.02. Notice of Asserted Liability.** Promptly after receipt by an indemnified party hereunder of notice of any demand, claim or circumstances which, with the lapse of time, would give rise to a claim or the commencement (or threatened commencement) of any action, proceeding or investigation (an "Asserted Liability") that may result in a Loss, such indemnified party shall give notice thereof (the "Claims Notice") to the indemnifying party. The Claims Notice shall describe the



available through no fault of the Company or the Shareholders; (b) is contained in the Company's books or records relating to other business conducted by the Company; (c) is received from a third party not under a confidentiality obligation; (d) is required to be disclosed pursuant to law or court order or any Tax or other regulatory inquiry; or (e) relates solely to a person or entity where such person or entity is an insured under a Policy in which case the disclosure shall be only to such person or entity. This Section 11.01 shall not apply to any information in the possession of any Shareholder prior to the Closing.

#### ARTICLE XII. MISCELLANEOUS.

Section 12.01. Buyer's Pre-Closing Access to Information. Buyer acknowledges that it has had the opportunity to conduct a complete review of the books and records of the Company concerning the Company and the Business, including actuarial reports and analyses by independent actuaries retained by the Company and in-house representatives of W.J. Burt Management, Inc., the Company's Managers (the "Managers"); that Buyer has had a reasonable and complete opportunity to discuss any and all aspects of and facts concerning the Company and the Business with the Managers and that the Managers have responded to all of the Buyer's inquiries with respect to such matters; and that the Buyer has received and relied upon no information concerning the Company or the Business from any source other than the Managers.

Section 12.02. Publicity. Except as may otherwise be required by law, no publicity release or announcement concerning this Agreement or the transactions contemplated hereby shall be made without the prior approval of the Company and the Buyer as to both the content and the manner of presentation and publication thereof.

Section 12.03. Notice. Any notice or other communication required or permitted under this Agreement shall be in writing and shall be delivered personally, telegraphed or sent by certified, registered or express mail, postage prepaid. Any such notice shall be deemed given when so delivered personally, telegraphed or, if mailed, on the date of receipt as follows:

(i) if to the Buyer to:

L. Edward Bobb  
The Oil & Gas Insurance Company  
101 Green Meadows Drive South  
P.O. Box 1839  
Columbus, Ohio 43216

with a copy to:

Paul W. Collins, Esq.  
Forum Holdings U.S.A., Inc.  
30 Monument Square  
Concord, MA 01742

(ii) if to the Company to:

The First New York Syndicate Corporation  
c/o W.J. Burt Management, Inc.  
140 South Atlantic Avenue  
P.O. Box 2574  
Ormond Beach, FL  
Attention: W. Lockwood Burt, Esq.

with a copy to:

Steven S. Honigman, Esq.  
Miller, Singer, Raives & Brandes, P.C.  
One Rockefeller Plaza  
New York, NY 10020

(iii) if to the Shareholders or to any one of them to:

Steven S. Honigman, Esq.  
Miller, Singer, Raives & Brandes, P.C.  
One Rockefeller Plaza  
New York, NY 10020

with a copy to each shareholder  
identified in Schedule 12.03.

Any party may, by notice given in accordance with this Section 12.02. to the other party, designate another address or person for receipt of notices hereunder.

Section 12.04. Entire Agreement. This Agreement (including its exhibits and schedules) contains the entire agreement among the parties and supersedes all prior agreements written or oral with respect of the subject matter.

Section 12.05. Waivers and Amendments; Non-Contractual Remedies; Preservation of Remedies. This Agreement may be amended, superseded, cancelled, renewed or extended, and the terms hereof may be waived, only by a written instrument signed by each of the parties or, in the case of a waiver, by the party waiving compliance. No delay on the part of any party in exercising any right, power or privilege hereunder shall operate as a waiver thereof. Nor shall any waiver on the part of any

party of any such right, power or privilege, nor any single or partial exercise of any such right, power or privilege, preclude any further exercise thereof or the exercise of any other such right, power or privilege. The rights and remedies herein provided are cumulative and are not exclusive of any rights or remedies that any party may otherwise have at law or in equity, except that the indemnity provided in ARTICLE X shall be exclusive where it is applicable.

**Section 12.06. Governing Law.** This Agreement shall be governed by and construed in accordance with the substantive laws of the State of New York.

**Section 12.07. Submission to Jurisdiction.**

(a) Any suit, claim, action or proceeding arising out of or relative to this Agreement, or for the enforcement of any judgment or order entered by any court in respect thereof, shall be brought in the United States District Court for the Southern District of New York or, in the event such court does not accept jurisdiction, in a state court of competent jurisdiction in New York, New York, and each of the parties hereto hereby submits to the jurisdiction of either of such courts.

(b) Each of the parties hereto hereby (i) irrevocably consents to the jurisdiction of the courts referred to in Subsection (a) of this Section 12.07, in connection with any matter arising out of this Agreement; (ii) waives personal service of any summons, complaint, or other process in connection with any such matter and agrees that the service thereof may be made in the manner set forth in Section 12.03; provided, however, that in the alternative, either party hereto may elect service on the other party in any other form or manner permitted by law; and (iii) agrees that should such party fail to appear or answer within thirty (30) days after the date of service upon it of the summons, complaint or other process, a motion for a judgment by default may be made and, if granted by the court, such judgment may be entered by the other party against such party for the amount or such other relief as may be demanded in any summons, complaint or other process so served.

(c) Each of the parties hereto irrevocably waives any objection which it may now or hereafter have to the laying of venue of any suit, claim, action or proceeding arising out of or relating to this Agreement, in the courts referred to in Subsection (a) of this Section 12.07 and further irrevocably waives any claim that any such suit, claim, action or proceedings brought in any such court has been brought in an inconvenient forum.

Section 12.08. Sales Tax. Any sales or use tax or other transfer or similar tax payable by reason of the transaction contemplated by this Agreement shall be split by the Buyer and the Company in equal amounts.

Section 12.09. Assignment. This Agreement, and each of the rights and obligations, shall not be assignable by any party without the written consent of the other parties, and any such non-consented assignment shall be void.

Section 12.10. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors, assigns, and legal representatives.

Section 12.11. Severability. In the event that any one or more of the provisions contained in this Agreement for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement.

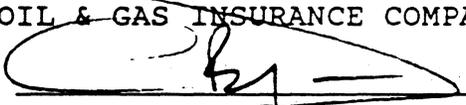
Section 12.12. No Third-Party Beneficiaries. Nothing in this Agreement is intended or shall be construed to give any person, other than the parties hereto and the other persons referred to in Section 10.01, any legal or equitable right, remedy or claim under or in respect of this Agreement or any provision contained herein.

Section 12.13. Counterparts. This Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same instrument. Each counterpart may consist of a number of copies hereof each signed by less than all, but together signed by all of the parties hereto.

Section 12.14. Headings. The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement on the Closing Date effective as of the Effective Date.

THE OIL & GAS INSURANCE COMPANY

By: 

Name: Clive Becker-Jones

Title: President

Date: February 27, 1990

IN WITNESS WHEREOF, the parties have executed this Agreement on the Closing Date effective as of the Effective Date.

THE OIL & GAS INSURANCE COMPANY

By: 

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

THE FIRST NEW YORK SYNDICATE CORPORATION

By: 

Name: KENNETH W.I. FLETCHER

Title: PRESIDENT

Date: 2/27/90

ARKWRIGHT MUTUAL INSURANCE COMPANY

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

IN WITNESS WHEREOF, the parties have executed this Agreement on the Closing Date effective as of the Effective Date.

THE OIL & GAS INSURANCE COMPANY

By: 

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

THE FIRST NEW YORK  
SYNDICATE CORPORATION

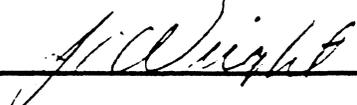
By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

ARKWRIGHT MUTUAL INSURANCE  
COMPANY

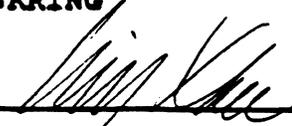
By: 

Name: Jonathan C. Wright

Title: Vice President and Controller

Date: February 26, 1990

GJENSIDIGE NORSK  
SKADEFORSKRING

By: 

Name: LAE, Leif R.

Title: Dep. Man. Director

Date: 21 Feb. 20

MUTUAL FIRE, MARINE AND INLAND  
INSURANCE COMPANY

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

NOUVELLE COMPAGNIE DE  
REASSURANCES

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

ORMOND REINSURANCE COMPANY

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**GJENSIDIGE NORSK  
SKADEFORSKRING**

**By:** \_\_\_\_\_  
**Name:** \_\_\_\_\_  
**Title:** \_\_\_\_\_  
**Date:** \_\_\_\_\_

**MUTUAL FIRE, MARINE AND INLAND  
INSURANCE COMPANY**

**By:** \_\_\_\_\_  
**Name:** \_\_\_\_\_  
**Title:** \_\_\_\_\_  
**Date:** \_\_\_\_\_

**NOUVELLE COMPAGNIE DE  
REASSURANCES**

**By:**  \_\_\_\_\_  \_\_\_\_\_  
**Name:** Peter Kamer Philippe Mogeon  
**Title:** President Senior Vice Pres  
**Date:** 2/2/90

**ORMOND REINSURANCE COMPANY**

**By:** \_\_\_\_\_  
**Name:** \_\_\_\_\_  
**Title:** \_\_\_\_\_  
**Date:** \_\_\_\_\_

GJENSIDIGE NORSK  
SKADEFORSKRING

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

MUTUAL FIRE, MARINE AND INLAND  
INSURANCE COMPANY

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

NOUVELLE COMPAGNIE DE  
REASSURANCES

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

ORMOND REINSURANCE COMPANY

By: W. Lockman  
Name: W. Lockman  
Title: President  
Date: 2/2/90

PEARL ASSURANCE PUBLIC LIMITED  
COMPANY

By: *KW Fletcher*

Name: KENNETH W.I. FLETCHER

Title: GENERAL MANAGER - GENERAL BUSINESS

Date: 2127190

POHJOLA GROUP

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

RYDER SYSTEM

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

PWC/cm  
1201a

PEARL ASSURANCE PUBLIC LIMITED  
COMPANY

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

POHJOLA GROUP, <sup>POHJOLA INSURANCE</sup>  
<sup>COMPANY LTD</sup>

By: *Kari Hiltunen*  
Name: *Kari Hiltunen*  
Title: *Director*  
Date: *2/27/90*

RYDER SYSTEM

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

PWC/cm  
1201a



THE FIRST NEW YORK  
SYNDICATE CORPORATION

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

ARKWRIGHT MUTUAL INSURANCE  
COMPANY

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

GJENSIDIGE NORSK  
SKADEFORSKRING

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

MUTUAL FIRE, MARINE AND INLAND  
INSURANCE COMPANY

By: Alexander Bratic  
Name: Alexander Bratic  
Title: Special Deputy  
Rehabilitator  
Date: May 10, 1990

SCHEDULE 3.05

The Liquidation Proceeding

On October 29, 1986, the Superintendent of Insurance of the State of New York commenced a proceeding in the Supreme Court of the State of New York, County of New York, entitled In the Matter of the Application of JAMES P. CORCORAN, as Superintendent of Insurance of the State of New York, for an order to take possession of and liquidate the business of and dissolve THE FIRST NEW YORK SYNDICATE CORPORATION (the "Syndicate").

In response to the proceeding, the Syndicate proposed a plan of rehabilitation to the Court.

The plan included the approval of the commutation of approximately 93% of the Syndicate's outstanding losses. The remaining non-commuted liabilities were reinsured with certain owners of the Syndicate with a \$14 million cover. The order also provides that after completion of the plan, the Syndicate must have \$1,134 million in surplus and be in a position to continue doing an insurance business in New York, which business shall not be the self-liquidation of the Syndicate.

On May 17, 1988 Justice Irving Kirschenbaum signed an order approving the Syndicate's plan of rehabilitation and adjourned the order to show cause pending completion of the plan.

After the Syndicate presented evidence of the completion of its plan and the restoration of its surplus to in excess of \$1,134,000 Justice Kirschenbaum, on December 31, 1988, dismissed the entire liquidation proceeding.

The Superintendent of Insurance has served a notice of intent to appeal this dismissal and has informed the Syndicate that it must be subject to the regulatory control of the New York Insurance Exchange, Inc. (the "Exchange").

The Superintendent of Insurance has informed the Syndicate that the appeal will be pursued unless the transaction contemplated in this agreement and subsequent merger are completed. The Attorney General of the State of New York, representing the Superintendent of Insurance and counsel for the Syndicate has signed a stipulation adjourning the appeal to the April, 1990 term of the Appellate Division, First Department.

### Arbitration with Continental Casualty.

This matter involves a claim by Continental Casualty (CNA) against The First New York Syndicate Corporation and several other syndicates on the New York Insurance Exchange, and Willcox, Inc. The Statement of Claim seeks allocated loss expenses under a Reinsurance Certificate in the amount of approximately \$762,000.00, plus interest, with The First New York Syndicate Corporation's share being \$190,500.00, plus interest. The issue is whether the Reinsurers are liable for allocated loss expenses in excess of the limits reinsured. The original insured is W. R. Grace.

It is the position of The First New York Syndicate Corporation as well as the other participating NYIE Syndicates that allocated loss expenses were, in fact, included in the certificate limits which the Syndicates have previously paid, due to exhaustion of our layer, for settlement of a claim.

The Arbitration currently under way in the State of New York called for discovery to be completed by November, 1989, and hearings to begin during 1990.

As indicated above, The First New York Syndicate Corporation has previously issued loss payments totaling \$112,500.00, representing its maximum exposure under the Reinsurance Certificate issued to CNA. The Syndicates have retained the services of Philip Walsh of the law firm of Wilson Elser Moskowitz Edelman & Dickler in New York to represent their interest in the Arbitration.

The Syndicate is maintaining a precautionary expense reserve in the amount of \$1.00.

### Potential Claim by LWB Syndicate, Inc.

The First New York Syndicate Corporation accepted a two and one-half percent (2 1/2) quota share participation in business underwritten by LWB Syndicate on the Illinois Insurance Exchange from December 1, 1982 through December 31, 1984. Experience on the account has been extremely poor and an audit has revealed evidence of substantial contractual violations. The LWB Syndicate, Inc. has submitted accounts to The First New York Syndicate showing accounts payable of \$674,582.00 and outstanding losses (excluding IBNR) of \$425,720.00. The First New York Syndicate Corporation has indicated that it will not pay the amounts demanded until reconciliation of the account is completed and the Syndicate's concerns about potential contractual violations are satisfied. The First New York Syndicate and LWB Syndicate have entered into a standstill agreement providing that no legal action will be taken by either party until an accurate accounting can be provided by LWB Syndicate and The First New York Syndicate has an opportunity to

audit that adjusted account. It is anticipated that arbitration proceedings or legal proceedings will need to be undertaken to resolve this matter. As of December 31, 1989, The First New York Syndicate Corporation has reflected the entire amount of LWB Syndicate's claimed liabilities (excluding IBNR) on its financial statement. Because LWB Syndicate has been unable to prepare an accurate account of this business it is impossible to project a realistic reserve for incurred but not reported losses on this account but it is assumed that a determination that The First New York Syndicate Corporation is liable for 100% of the amounts claimed by LWB Syndicate (including incurred but not reported losses) could have a substantial adverse impact on The First New York Syndicate Corporation.

SCHEDULE 12.03

Arkwright Mutual Insurance Company  
225 Wyman Street  
P.O. Box 9198  
Waltham, Mass. 02254-9198  
Attention: Mr. Jonathan Wright

Gjensidige Norsk Skadeforskring  
Tullingst. 6  
P.O. Box 6738 Olavs Pl.  
Oslo 1, Norway  
Attention: Mr. Leif Lae

Mutual Fire, Marine and Inland  
Insurance Company  
1760 Market Street  
Philadelphia, Pennsylvania 19103  
Attention: Michael Bach, Esq.

Nouvelle Compagnie de Reassurances  
Rue de L'Athenee 6-8  
1211 Geneve 3  
Switzerland  
Attention: Philippe Moegeon

Ormond Re Group, Inc.  
140 South Atlantic Avenue  
Ormond Beach, Florida 32074  
Attention: W. Lockwood Burt, Esq.

Pearl Assurance Public Limited Co.  
252 High Holborn  
London WC1  
England  
Attention: Mr. Kenneth Fletcher

Pohjola Insurance Company Limited  
Lapinmaentie 1  
SF-00300 Helsinki  
Finland  
Attention: Ms. Elisabeth Vihavainen

Ryder System, Inc.  
3600 N.W. 82nd Avenue  
Miami, Florida 33166  
Attention: Gina Russ, Esq.

Exhibit K

**PLAN OF MERGER OF**  
**THE FIRST NEW YORK SYNDICATE CORPORATION**  
**AND**  
**THE OIL & GAS INSURANCE COMPANY**  
**INTO**  
**THE OIL & GAS INSURANCE COMPANY**

**ARTICLE I**

**NAMES OF CONSTITUENT CORPORATIONS**

1. The name of the Subsidiary Corporation is THE FIRST NEW YORK SYNDICATE CORPORATION, a corporation formed under the laws of the State of New York, located at 3 East 54th Street, New York, NY 10022.

2. The name of the Surviving Corporation is THE OIL & GAS INSURANCE COMPANY, a corporation formed under the laws of the State of Ohio, located at 101 Green Meadows Drive South, Westerville, Ohio 43081 and subsequent to the merger its name shall be THE OIL & GAS INSURANCE COMPANY.

**ARTICLE II**

**SHARES OF CONSTITUENT CORPORATIONS**

1. As to the Subsidiary Corporation, the designation and number of outstanding shares of each class is as follows:

**THE FIRST NEW YORK SYNDICATE CORPORATION**

There are 4,600 shares of common stock authorized and outstanding of par value of \$500 per share.

These shares are not divided into series or voting classes.

2. As to the Surviving Corporation, the designation and number of outstanding shares of each class is as follows:

**THE OIL & GAS INSURANCE COMPANY**

There are 750 shares of common stock authorized of par value of \$23,500 per share. 100 shares of the common stock have been issued.

These shares are not divided into series or voting classes.

All of the shares of the Subsidiary Corporation described above shall be owned by the Surviving Corporation, and will be retired by the Surviving Corporation subsequent to the merger.

Attached is a copy of the corporate charter of the Oil & Gas Insurance Company. The merger will not effect any change in the charter of the Surviving Corporation.

### ARTICLE III

#### **TERMS AND CONDITIONS OF PROPOSED MERGER**

The terms and conditions of the proposed MERGER are as follows:

Pursuant to this Plan of Merger all the rights, franchises and interests of the constituent corporations, in and to every species of property, real, personal and mixed, and things in action thereunto belonging, shall be deemed as transferred to and vested in the surviving corporation, without any other deed or transfer; and simultaneously therewith such surviving corporation shall be deemed to have assumed all the liabilities of the constituent corporations. The surviving corporation shall succeed to all right, title and interest to the following assets of THE FIRST NEW YORK SYNDICATE CORPORATION:

(a) Files. Any and all active files (the "Files") with respect to the Business of the Subsidiary Corporation including, but not necessarily limited to, applications, policies, endorsements, declaration pages, customer lists, medical and claim history files, sales records, records relating to regulatory matters or correspondence with regulators, and any other files or documentation owned by and in the possession or control of the Company on the Effective Date of the Stock Purchase Agreement which may be necessary or desirable to assist the Surviving Corporation in the reinsurance, assumption, or renewal of the policies.

The Files shall include both paper (hard) copy and, except as may be subject to any software licensor's rights with respect thereto, any database or magnetic or optical media and other form of recorded information.

(b) Intangible Personal Property. The intangible personal property consisting of premiums due and other accounts receivable, from any agent or insured with respect to any policy.

(c) Cash and Securities. All cash and securities in possession of or belonging to the Subsidiary Corporation as of the Merger date, including funds held by or deposited with reinsured companies.

(d) Reinsurance. All reinsurance recoverables or claims arising out of any reinsurance contracts to which the Subsidiary

Corporation is a party.

#### ARTICLE IV

##### **ASSUMED LIABILITIES**

The Surviving Corporation agrees to assume from the Subsidiary Corporation all of the liabilities of the Subsidiary Corporation which may relate to all of the assets listed in paragraphs (a), (b), (c) and (d), above including but not limited to the liability for all renewal, contingent or other commissions which may become payable relative to the premiums due referenced in paragraph (b) above after the merger date by the Subsidiary Corporation under any agency agreements between the Subsidiary Corporation and any agent. The Surviving Corporation also agrees to assume from the Subsidiary Corporation all of the liabilities relative to those certain contracts of insurance and reinsurance to which the Subsidiary Corporation is a party. All of the liabilities being assumed by the Surviving Corporation are collectively referred to as the "Assumed Liability".

#### ARTICLE V

##### **APPROVALS**

The merger shall become effective in accordance with the provisions of this plan and the separate existence of THE FIRST NEW YORK SYNDICATE CORPORATION shall cease upon completion of the following requirements:

1. The filing with the New York Insurance Department of a certificate of approval of the Ohio Insurance Department.
2. The approval of the Superintendent of Insurance of the State of New York.
3. The filing of a duplicate or certified copy of this plan of merger along with the approval of the Superintendent in the office of the County Clerk, New York County.
4. The filing of a certificate of merger by the surviving corporation with the Secretary of State of the State of New York, as required by the Business Corporation Law of the State of New York.

#### ARTICLE VI

##### **THE SURVIVING CORPORATION**

The Oil & Gas Insurance Company, shall survive such merger and shall continue in existence and shall, without other transfer, succeed to and possess all the rights, privileges,

immunities, powers and purposes of each of the Constituent Corporations, and all the property, real and personal including subscriptions for shares, causes of action and every other asset

of each of the Constituent Corporations, shall vest in such Surviving Corporation without further act or deed, except that if the Surviving Corporation shall at any time deem it desirable that any further assignment or assurance shall be given to fully accomplish the purposes of this merger, the directors and officers of either Constituent Corporation shall do all things necessary, including the execution of any and all relevant documents, to properly effectuate the merger; the Surviving Corporation shall assume and be liable for all the liabilities, obligations and penalties of each of the Constituent Corporations. No liability or obligation due or to become due, claim or demand for any cause existing against either corporation, or any shareholder, officer or director thereof, shall be released or impaired by such merger. No action or proceeding, civil or criminal, then pending by or against either Constituent Corporation, or any shareholder, officer or director thereof, shall abate or be discontinued by such merger, but may be enforced, prosecuted, settled or compromised as if such merger had not occurred, or the Surviving Corporation may be substituted in such action in place of either Constituent Corporation.

The foregoing plan has been duly approved by the respective boards of directors of each constituent corporation on the following dates:

THE OIL & GAS  
INSURANCE COMPANY

THE FIRST NEW YORK  
SYNDICATE CORPORATION

By: 

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

Name: Clive Becker-Jones

Name: \_\_\_\_\_

Title: President

Title: \_\_\_\_\_

Date: February 27, 1990

Date: \_\_\_\_\_

PWC/mez  
1193A

of each of the Constituent Corporations, shall vest in such Surviving Corporation without further act or deed, except that if the Surviving Corporation shall at any time deem it desirable that any further assignment or assurance shall be given to fully accomplish the purposes of this merger, the directors and officers of either Constituent Corporation shall do all things necessary, including the execution of any and all relevant documents, to properly effectuate the merger; the Surviving Corporation shall assume and be liable for all the liabilities, obligations and penalties of each of the Constituent Corporations. No liability or obligation due or to become due, claim or demand for any cause existing against either corporation, or any shareholder, officer or director thereof, shall be released or impaired by such merger. No action or proceeding, civil or criminal, then pending by or against either Constituent Corporation, or any shareholder, officer or director thereof, shall abate or be discontinued by such merger, but may be enforced, prosecuted, settled or compromised as if such merger had not occurred, or the Surviving Corporation may be substituted in such action in place of either Constituent Corporation.

The foregoing plan has been duly approved by the respective boards of directors of each constituent corporation on the following dates:

THE OIL & GAS  
INSURANCE COMPANY

THE FIRST NEW YORK  
SYNDICATE CORPORATION

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

By: *Kenneth W. I. Fletcher*

Name: \_\_\_\_\_

Name: KENNETH W. I. FLETCHER

Title: \_\_\_\_\_

Title: PRESIDENT

Date: \_\_\_\_\_

Date: \_\_\_\_\_

PWC/mez  
1193A

Exhibit L

**RESOLUTION OF THE  
BOARD OF DIRECTORS OF  
THE FIRST NEW YORK SYNDICATE CORPORATION**

The Undersigned, being all of the directors of THE FIRST NEW YORK SYNDICATE CORPORATION, a corporation organized and existing under the Laws of the State of New York, do hereby adopt the following resolutions:

WHEREAS, an offer has been made to the Shareholders of The First New York Syndicate Corporation by The Oil & Gas Insurance Company, to acquire all of the Common Stock of this Corporation for the consideration and upon the terms and conditions set forth in the proposed agreement annexed hereto, and

WHEREAS, in the opinion of this Board of Directors, it is in the best interest of this Corporation that all of its Common Stock be sold to The Oil & Gas Insurance Company for the consideration and upon the terms and conditions set forth in the proposed agreement, be it

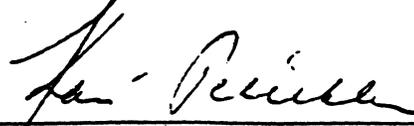
RESOLVED, that the offer of The Oil & Gas Insurance Company is hereby accepted, subject to the written approval of the shareholders of this Corporation, and

---

Leif Ragnar Lae

---

Philippe Louis Mogeon



---

Kari Juhani Pellikka

---

George I. Stoeckert

---

Leif Ragnar Lae

*W. M.*  

---

Philippe Louis Mogeon

---

Kari Juhani Pellikka

---

George I. Stoeckert

---

Leif Ragnar Lae

---

Philippe Louis Mogeon

---

Kari Juhani Pellikka



---

George I. Stoeckert

Exhibit M

**CERTIFICATE OF MERGER**  
**OF**  
**THE FIRST NEW YORK SYNDICATE CORPORATION**  
**INTO**  
**THE OIL & GAS INSURANCE COMPANY**

Under Section 1701.81 of the Ohio Revised Code: General Corporation Law.

The undersigned, Clive Becker-Jones and Rosemond D. Connell, being respectively, the president and the assistant secretary of The Oil & Gas Insurance Company, a corporation duly organized and existing under and by virtue of the laws of the State of Ohio, and W. Lockwood Burt and David A. Burt, being respectively, the executive vice president and assistant secretary of The First New York Syndicate Corporation, a foreign corporation duly organized and existing under and by virtue of the laws of the State of New York, said The Oil & Gas Insurance Company owning one hundred percent of the outstanding shares of The First New York Syndicate Corporation, do hereby certify that a plan of merger was duly adopted by the Boards of Directors of the said domestic corporation and the said foreign corporation, and that:

(1) The name of the foreign subsidiary corporation to be merged is THE FIRST NEW YORK SYNDICATE CORPORATION.

(2) The name of the surviving domestic corporation is THE OIL & GAS INSURANCE COMPANY.

(3) The designation and number of outstanding shares of each class of The First New York Syndicate Corporation and the number of shares of each class owned by The Oil & Gas Insurance Company is as follows:

<u>Designation of Outstanding Shares</u>	<u>Number of Outstanding Shares</u>	<u>Number of Outstanding Shares Owned by Surviving Corp.</u>
Common	4600	4600

(4) The jurisdiction of incorporation of The Oil & Gas Insurance Company is Ohio.

(5) This merger is permitted by the laws of New York and is in compliance therewith.

(6) The date of incorporation of The Oil & Gas Insurance Company is December 6, 1978.

(7) An application by The Oil & Gas Insurance Company to do an insurance business in the State of New York was filed with The New York Insurance Department and was approved on June 22, 1982.

(8) The date when the Certificate of Incorporation was filed by The First New York Syndicate Corporation was the 4th day of April, 1979.

IN WITNESS WHEREOF, the undersigned have executed and signed this certificate this 27<sup>th</sup> day of February, 1990.

The Oil & Gas Insurance Company

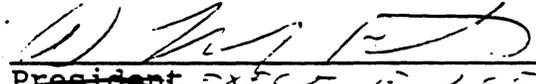
By: 

Clive Becker-Jones  
President

Attest: 

Rosemond D. Connell  
Assistant Secretary

THE FIRST NEW YORK SYNDICATE CORPORATION

By: 

President ~~EXECUTIVE VICE PRESIDENT~~

Attest: 

~~Exec. Vice~~ Assist. Sect.

**CERTIFICATE OF MERGER**  
**OF**  
**THE FIRST NEW YORK SYNDICATE CORPORATION**  
**INTO**  
**THE OIL & GAS INSURANCE COMPANY**

Under Section 907 of the Business Corporation Law

The undersigned, Clive Becker-Jones and Rosemond D. Connell, being respectively, the president and the assistant secretary of The Oil & Gas Insurance Company, a foreign corporation duly organized and existing under and by virtue of the laws of the State of Ohio, said The Oil & Gas Insurance Company owning one hundred percent of the outstanding shares of The First New York Syndicate Corporation, do hereby certify that a plan of merger was duly adopted by the board of directors of the said surviving foreign corporation and that:

(1) The name of the domestic subsidiary corporation to be merged is THE FIRST NEW YORK SYNDICATE CORPORATION.

(2) The name of the surviving corporation is THE OIL & GAS INSURANCE COMPANY.

(3) The designation and number of outstanding shares of each class of the First New York Syndicate Corporation and the number of shares of each class owned by The Oil & Gas Insurance Company is as follows:

<u>Designation of Outstanding Shares</u>	<u>Number of Outstanding Shares</u>	<u>Number of Outstanding Shares Owned by Surviving Corp.</u>
Common	4600	4600

(4) The jurisdiction of incorporation of The Oil & Gas Insurance Company is Ohio.

(5) This merger is permitted by the laws of Ohio and is in compliance therewith.

(6) the date of incorporation of The Oil & Gas Insurance Company is December 6, 1978.

(7) An application by The Oil & Gas Insurance Company to do an insurance business in the State of New York was filed with The Insurance Department and was approved on June 22, 1982.

(8) The date when the Certificate of Incorporation was filed by The First New York Syndicate Corporation was the 4th day of April, 1979.

(9) The surviving foreign corporation hereby agrees that it may be served with process in New York in any action or special proceeding for the enforcement of any liability or obligation of the constituent subsidiary domestic corporation, The First New York Syndicate Corporation.

(10) The surviving foreign corporation hereby designates the Secretary of State of the State of New York as its agent upon whom process against said surviving foreign corporation may be served in the manner set forth in Business Corporation Law Section 306(b) in any action or special proceeding.

(11) The Secretary of State of the State of New York shall mail a copy of any process served upon him as agent for the surviving foreign corporation to 101 Green Meadows Drive South, Westerville, Ohio, 43081.

IN WITNESS WHEREOF, the undersigned have executed and signed this certificate this 27<sup>th</sup> day of February, 1990.



Clive Becker-Jones  
President



Rosemond D. Connell  
Assistant Secretary

**CERTIFICATE OF CONSENT  
OF SHAREHOLDERS**

WHEREAS, on the 27 day of February, 1990, the Directors of THE FIRST NEW YORK SYNDICATE CORPORATION, by unanimous vote of the whole Board, at a meeting called for that purpose, did adopt resolutions:

(1) accepting the offer of The Oil & Gas Insurance Company to acquire all of the Common Stock of The First New York Syndicate Corporation upon the terms and conditions set forth in a proposed agreement;

(2) accepting the offer of the Retrocessionaires of The First New York Syndicate Corporation under the Aggregate Excess of Loss Retrocession Treaty, effective 12:01 a.m., May 17, 1988 (the "Aggregate Excess Treaty"), of the full and final settlement, commutation, release and discharge of any and all of the parties' respective obligations under the Aggregate Excess Treaty and their entry into mutual releases related thereto upon the terms and conditions set forth in a proposed agreement (the "Reinsurance Commutation"); and

(3) authorizing the President to make and execute the proposed agreements upon the written approval of same by the shareholders;

Exhibit N

RICHARD F. CELESTE  
Governor



614-644-2640

STATE OF OHIO  
DEPARTMENT OF INSURANCE  
2100 STELLA COURT  
COLUMBUS 43266-0566

*maile  
C. J. L.*  
**JB**  
**RECEIVED**

FEB 07 1990

INSURANCE DEPT.  
PROPERTY COMPANIES BUREAU

February 2, 1990

Ms. JoAnne Brazenor  
Supervising Insurance Examiner  
Property Companies Bureau  
New York State Insurance Department  
160 West Broadway  
New York, NY 10013

Re: Oil & Gas Insurance Company Proposed Merger  
with The First New York Syndicate

Dear Ms. Brazenor:

This is to acknowledge this Department's knowledge and involvement in the proposed merger between Oil & Gas Insurance Company and The First New York Syndicate.

The Oil & Gas Insurance Company has structured the transaction under Ohio general corporate law. Oil & Gas Insurance company has followed normal insurance regulatory practice in this State and submitted the details of the proposed transaction to this Department and its Examination-Audit Division. The Department has acquiesced in the transaction and does not interpose any objection.

Very truly yours,

*Mary Jo Hudson*

Mary Jo Hudson  
Attorney  
Legal Division

MJH:tmw

cc: Dana Rudmose, Assistant Director  
Bill Rossbach, Chief Examiner

*QJN*

OHIO  
*the heart of it all*

NOW THEREFORE, the undersigned shareholders of the Corporation, representing all the shares of the Corporation entitled to vote thereon, by this writing do hereby approve and adopt the proposed agreements for the sale of the Common Stock of The First New York Syndicate Corporation to The Oil & Gas Insurance Company and for the Reinsurance Commutation.

GJENSIDIGE NORSK  
SKADEFORSKRING

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

Name: LAE, Leif R.

Title: Dep. Man. Director

Date: 2/27/90

MUTUAL FIRE, MARINE AND INLAND  
INSURANCE COMPANY

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

NOW THEREFORE, the undersigned shareholders of the Corporation, representing all the shares of the Corporation entitled to vote thereon, by this writing do hereby approve and adopt the proposed agreements for the sale of the Common Stock of The First New York Syndicate Corporation to The Oil & Gas Insurance Company and for the Reinsurance Commutation.

GJENSIDIGE NORSK  
SKADEFORSKRING

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

MUTUAL FIRE, MARINE AND INLAND  
INSURANCE COMPANY

By: Alexander Bratic

Name: Alexander Bratic

Title: Special Deputy  
Rehabilitator

Date: May 10, 1990

NOUVELLE COMPAGNIE DE  
REASSURANCES

By:  

Name: Peter Kamer Philippe Mogeon

Title: President Senior Vice President

Date: 2/27/90

ORMOND REINSURANCE COMPANY

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

PEARL ASSURANCE PUBLIC LIMITED  
COMPANY

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

NOUVELLE COMPAGNIE DE  
REASSURANCES

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

ORMOND REINSURANCE COMPANY

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

PEARL ASSURANCE PUBLIC LIMITED  
COMPANY

By: *Kenneth W. I. Fletcher*

Name: KENNETH W. I. FLETCHER

Title: GENERAL MANAGER - GENERAL BUSINESS

Date: 2/27/50

NOUVELLE COMPAGNIE DE  
REASSURANCES

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

ORMOND REINSURANCE COMPANY

By: W. L. J. P.

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: 2/27/90

PEARL ASSURANCE PUBLIC LIMITED  
COMPANY

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

NYIE SECURITY FUND, INC.  
161 William Street  
New York, New York 10038

CONFIRMING ORIGINAL  
OF FAX MESSAGE

VIA RAPIFAX

March 1, 1990

✓ Steven S. Honigman, Esq.  
Miller, Singer, Raives & Brandes, P.C.  
One Rockefeller Plaza  
New York, New York 10010

Paul W. Collins, Esq.  
Forum Holdings  
30 Monument Square  
Concord, Massachusetts 01472

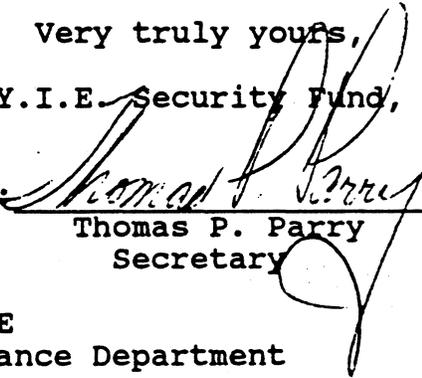
Re: The First New York Syndicate  
Corporation - Sale of Common  
Stock and Merger with the Oil  
& Gas Insurance Company

Dear Messrs. Honigman and Collins:

Please be advised that the NYIE Security Fund, Inc. (the "Security Fund") has no objection to the proposed sale of the outstanding common stock of The First New York Syndicate Corporation ("FNY") to the Oil & Gas Insurance Company ("Oil & Gas"), and the proposed merger of FNY into Oil & Gas.

Very truly yours,

N.Y.I.E. Security Fund, Inc.

BY: 

Thomas P. Parry  
Secretary

cc: Ms. JoAnne Brazenor, CFE  
State of New York Insurance Department  
By Fax to: 602-8826

Mr. Gary Kratzer  
The New York Insurance Exchange, Inc.  
By Fax to: 233-6704

Mr. Patrick J. Foley  
Chairman, NYIE Security Fund, Inc.  
By Hand

1  
  
\_\_\_\_\_  
Leif Ragnar Lae

\_\_\_\_\_  
Philippe Louis Mogeon

\_\_\_\_\_  
Kari Juhani Pellikka

\_\_\_\_\_  
George I. Stoeckert

Exhibit 0

POHJOLA GROUP

By: Kari Peltola

Name: \_\_\_\_\_

Title: Director

Date: 2/27/90

RYDER SYSTEM

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

POHJOLA GROUP

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

RYDER SYSTEM

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

ARKWRIGHT MUTUAL INSURANCE COMPANY

By: *J C Wright*

Name: Jonathan C. Wright

Title: Vice President and Controller

Date: February 26, 1990

Exhibit P

Exhibit Q



JPB APR 30 '92

STATE OF NEW YORK  
INSURANCE DEPARTMENT  
160 WEST BROADWAY  
NEW YORK, NEW YORK 10013-3393

SALVATORE R. CURIALE  
SUPERINTENDENT OF INSURANCE

MIRIAM A. BOGGIO  
DEPUTY SUPERINTENDENT

April 27, 1992

John P. Brody  
Emens, Hurd, Kegler & Ritter Co., L.P.A.  
Capitol Square  
Suite 1800  
65 East State Street  
Columbus, Ohio 43215-4294

RE: The First New York Syndicate Corporation  
The Oil & Gas Insurance Company, in Liquidation

Dear Mr. Brody:

This will respond to your April 17, 1992 letter requesting confirmation on behalf of the Superintendent of the Insurance Department for the State of New York ("Superintendent") as to the following:

The Oil & Gas Insurance Company (OGICO) and The First New York Syndicate Corporation (FNY) entered into a Plan of Merger to be effective December 31, 1989. The Plan of Merger provided that FNY was merged into OGICO and that OGICO was the survivor corporation. OGICO agreed to purchase and FNY's shareholders agreed to sell the shares of FNY. Various agreements and certificates were submitted to the Superintendent in connection with the Plan of Merger. FNY transferred funds and operations to OGICO, and OGICO purchased seven of the eight shares of FNY. Prior to completion of all requisites for a legal merger, an Order of Rehabilitation was entered against OGICO in the Ohio courts. Later, an Order of Liquidation was also entered. As a result, the requisites for a legal merger were never completed by OGICO and FNY. However, Ohio Liquidator's analysis is that a de facto merger occurred between OGICO and FNY, and consequently that the Liquidator is responsible for the administration of the assets and liabilities of FNY through the liquidation of OGICO in the Ohio courts, as provided by the Ohio Revised Code.

You have requested that the Superintendent acknowledge the following:

- (1) FNY has merged with and into OGICO by de facto merger;
- (2) The Superintendent does not intend to liquidate or administer the assets and liabilities of FNY;

John P. Brody  
April 27, 1992  
page 2

- (3) The Liquidator is responsible for the liquidation of OGICO (including the administration, commutation, prosecution, defense and adjustment of assets and liabilities of FNY by virtue of its de facto merger with and into OGICO) through the Ohio courts and that creditors of FNY are relegated to submit proof of claims to the estate of OGICO through the Liquidator.

In connection with the points raised above, the Superintendent will not seek to void, rescind, set aside or otherwise challenge any commutation, release, agreement, disposition of assets or other transactions to which FNY has been a party.

The Superintendent reserves all rights and authority to consider possible disciplinary action against any officer or director of OGICO who have acted improperly with respect to assets and liabilities of FNY should they apply for licensure or similar authority with the Superintendent at any time.

Consequently, the future administration and liquidation of the assets and liabilities of FNY shall be administered by the Liquidator and the Ohio courts, all as provided by the Ohio Revised Code.

The New York State Department of Insurance does not object to the above.

Very truly yours,

SALVATORE R. CURIALE  
Superintendent of Insurance

By:

*Miriam A. Boggio*

Miriam A. Boggio  
Deputy Superintendent

New York Insurance  
Exchange, Inc.

111 Fulton Street  
New York, NY 10038

212 518 9200  
Telex No. 961087 NYIE NYK



INSURANCE  
EXCHANGE

VIA FACSIMILE

February 23, 1990

Steven S. Honigman, Esq.  
Miller, Singer, Raives & Brandes, P.C.  
One Rockefeller Plaza  
New York, New York 10020

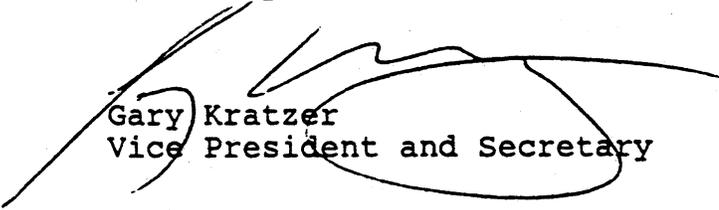
Dear Mr. Honigman:

On February 23, 1990 the New York Insurance Exchange Board of Governors' reviewed, pursuant to Operating Rule 8.10, the sale of The First New York Syndicate Corporation proposed in your letter of January 29, 1990. After a discussion, the Board determined not to invoke its authority to disapprove such changes in interest.

The thorough and orderly documentation accompanying your notice made our review relatively easy and is very much appreciated.

If you have any questions, please contact me.

Sincerely,

  
Gary Kratzer  
Vice President and Secretary

GK:ad