

JUDGE BATTS

11 CIV 6592

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

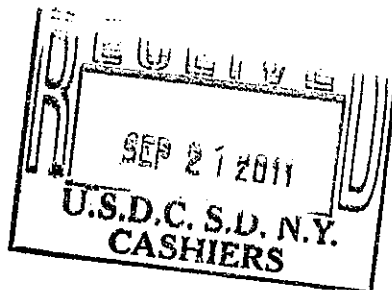
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In the Matter of the Arbitration between  
  
MINNETONKA INSURANCE COMPANY,  
  
Petitioner,

Civ. No. \_\_\_\_\_

**PETITION TO CONFIRM  
ARBITRATION AWARD**

-and-

LLOYD'S SYNDICATE SJC-2003,  
INFRASSURE LIMITED, and  
SCOR UK COMPANY LIMITED,  
  
Respondents.  
-----X



Petitioner Minnetonka Insurance Company ("Minnetonka"), by and through its attorneys, Wollmuth Maher & Deutsch LLP, in support of its Petition to confirm the arbitration award described below, alleges as follows:

**INTRODUCTION**

1. This case involves a reinsurance dispute arising out of three identical facultative reinsurance agreements between Minnetonka and the Respondents. The relevant agreements contain arbitration clauses and an arbitration was conducted pursuant to those clauses. Minnetonka now seeks to confirm each of the rulings that constitute the arbitration award issued on June 20, 2011 (the "Final Order") in an arbitration captioned Minnetonka Insurance Company v. Lloyd's Syndicate SJC-2003, Infrassure Limited and SCOR UK Company Limited. A true and correct copy of the Final Order is annexed hereto as Exhibit 1.

2. The Final Order adopted Minnetonka's requested relief in almost every respect.

Specifically, the Final Order consists of two rulings. Initially, on April 11, 2011, the Panel ruled, in relevant part, that:

1. To the extent that Minnetonka reaches settlement with Cargill on the terms that were previously agreed to by the Respondents, in accordance with the Claims Control provisions appearing in the Reinsurance Agreements between the Respondents and Minnetonka bearing HIJ082, are obligated to fund the settlement and Minnetonka and the Respondents are obligated to fully and completely release each other from any and all claims or disputes between one another as to such settlement and/or payment.
2. To the extent that the Respondents have already funded partial payment to Cargill relating to the Loss, the Respondents shall be deemed to have withdrawn any reservation(s) of their rights as to such payment and are precluded from: (i) asserting that Minnetonka has breached the claims cooperation clause with respect to such payment and/or settlements and/or; (ii) seeking reimbursement from Minnetonka with respect to such payments or settlements.
3. In accordance with the representations of the Respondents at the Organizational Meeting, going forward from the date of the Organizational Meeting (May 10, 2010), the Respondents are required to either agree or disagree unconditionally and without any reservations with respect to Minnetonka's proposed settlements, compromises or admissions of liability in connection with the measurement and adjustment of the Loss.
4. Any and all prior reservation of rights issued by the Respondents in connection with the agreed, disagreed, or partially funded amounts with respect to Minnetonka's proposed settlements, compromises or admissions of liability related to the measurement and adjustment of the Loss shall be withdrawn by Respondents or deemed to be withdrawn with prejudice.

See Exhibit 1 at Ex. A. Following this ruling, on May 17, 2011, the Panel ruled, in relevant part, that:

With respect to prior reservation of rights on any and all prior partial payment requests relating to the Loss, all are withdrawn or deemed to be withdrawn.

At this time, it appears to the Panel that there are no known prior partial payment requests that require resolution of any reservation of rights issue. Accordingly, all discovery requests related to past partial payment requests are irrelevant and do not require involvement of the Panel.

However, if any outstanding reservation of rights or advices that Minnetonka has breached the Claims Cooperation clause exist for previously identified, but not yet submitted, potential payment requests, any such reservation of rights would apply to such potential payment requests. Like the prior reservations, this revived reservation, or any new reservations, may continue only for the reasonable period of time necessary for Reinsurers to accept or deny the payment request.

See Exhibit 1 at Ex. B. Finally, Minnetonka and the Reinsurers resolved the remaining arbitration claims unaffected by the Panel's rulings by settlement. Accordingly, Minnetonka seeks confirmation of the Final Order and entry of judgment consistent with its terms.

### **PARTIES, JURISDICTION AND VENUE**

3. Minnetonka is incorporated in Vermont and its principal place of business is in Minneapolis, Minnesota.

4. The Respondents include three reinsurers: (i) Lloyd's Sydicate SJC-2003, (ii) Infrassure Limited, and (iii) SCOR UK Company Limited (collectively, the "Reinsurers" or the "Respondents"). Upon information and belief, each of these companies at all times hereinafter mentioned was and still is a United Kingdom corporation with its principal place of business in the United Kingdom.

5. This Court has subject matter jurisdiction over this action based upon the following facts. This is a proceeding to confirm an award based on a commercial arbitration agreement. The arbitration agreement is deemed, by virtue of 9 U.S.C. § 202, to fall under the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (a treaty of the United States) because it is not entirely between citizens of the United States. Accordingly, the Court has subject matter jurisdiction under 9 U.S.C. § 203. Further, this matter arises under the Constitution, laws or treaties of the United States within the meaning of 28 U.S.C. § 1331. The Court also has subject matter jurisdiction pursuant to 28 U.S.C. § 1332 because the parties are of diverse citizenship and the amount in controversy herein exceeds \$75,000.

6. Venue is proper in this District pursuant to 9 U.S.C. § 204 because the parties' agreement provides for arbitration in any location agreed upon by both parties and the parties agreed upon arbitration in New York, New York and held an organizational meeting in New York. Venue is also proper in this District pursuant to 9 U.S.C. § 9 because the parties have not agreed to a forum for confirmation and this is the district within which the arbitration took place.

### **FACTUAL BACKGROUND**

7. Minnetonka and its Reinsurers entered into three identical facultative reinsurance agreements bearing numbers HJJ082, each effective from March 1, 2008 to March 1, 2009 (the "Reinsurance Agreements"), whereby the Reinsurers agreed to indemnify Minnetonka for a share of losses paid by Minnetonka under a policy of insurance it issued to an entity known as Cargill, Inc. and its affiliates (collectively, "Cargill"). A copy of each of the Reinsurance Agreements is attached hereto as Exhibits 2, 3 and 4.

8. The Reinsurance Agreements each contain an identical arbitration clause that provides in relevant part that any arbitration award shall be binding upon the parties:

Any controversy or claim arising out of or relating to this Agreement between the Company and the Reinsurers, which cannot be resolved in the normal course of business, shall be submitted to and determined by binding arbitration.

(See Exhibit 2 at p. 4.)

9. In 2008, Cargill sustained a loss at its Cedar Rapids, Iowa facilities as a result of the flooding of the nearby Cedar River (the "Loss"). Cargill made a claim in excess of \$220 million for property damage and time element losses it allegedly sustained in its Oil Seed, Corn Mill and Wheat divisions located in Cedar Rapids as well as other locations around the country.

10. A dispute between Minnetonka and the Reinsurers arose when Minnetonka sought to enforce reinsurance coverage under the Reinsurance Agreements. Upon submission of claims by Minnetonka, the Reinsurers approved some aspects of the Loss and declined others, while also issuing broad reservations of rights on all such decisions. It was Minnetonka's position that such reservations of rights were contrary to the language and intent of the Reinsurance Agreements. The Reinsurers also raised factual disputes with regard to Minnetonka's handling of the Loss as well as its right to be reimbursed for certain loss adjustment expenses.

11. By demand dated October 28, 2009, Minnetonka initiated arbitration under the Reinsurance Agreements against the Reinsurers (the "Arbitration"). A copy of the demand is attached hereto as Exhibit 5. In the Arbitration, Minnetonka sought, among other things:

- (i) a declaration that the Reinsurers must either agree or disagree unconditionally and without reservation to Minnetonka's proposed settlements, compromise or admission of liability in connection with the measurement and adjustment of the Loss;
- (ii) a declaration that the Reinsurers' previous reservation of rights with respect to the Loss were improper and are withdrawn with prejudice; and
- (iii) a declaration that the Reinsurers are obligated to make payments for Minnetonka's past and future outside coverage counsel fees provided in connection with the Loss in accordance with the "Claim and Loss Adjustment Expenses" provisions of the Reinsurance Agreements (the "LAE Claim").

12. The parties each appointed an arbitrator, and an umpire was selected pursuant to the terms of the arbitration agreement. The arbitration panel (the "Panel") was formed and, following disclosures, the Panel was duly accepted by the parties.

13. The parties and the Panel met for an organizational meeting on May 10, 2010 in New York, New York.

14. Following the organizational meeting, the parties submitted a series of letters, briefs and replies regarding Minnetonka's claims and Respondents' defenses. For instance,

Minnetonka made submissions to the Panel on April 9, 2010, June 11, 2010, July 16, 2010, January 7, 2011 and February 1, 2011. In turn, the Reinsurers made submissions on April 16, 2010, May 25, 2010, December 21, 2010, and January 7, 2011.

15. Following deliberations, the Panel rendered its Interim Orders dated April 11, 2011, and an email ruling on May 17, 2011 (together, the “Interim Orders”), which adopted Minnetonka’s proposed relief in almost every respect, as set forth in Paragraph 2 (above).

16. After receiving the Interim Orders, Minnetonka and the Reinsurers subsequently agreed to resolve their dispute over the LAE Claim through the execution of a confidential settlement agreement.

17. The Panel issued a Final Order by agreement of the parties on June 20, 2011, reflecting the relief set forth in Paragraph 2 (above).

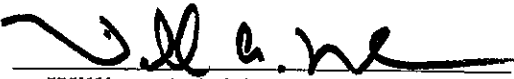
18. Minnetonka is entitled to confirmation of each of the Panel’s rulings that constitute the Final Order and entry of judgment under 9 U.S.C. §§ 9 and 207.

19. No grounds exist under 9 U.S.C. §§ 10 and 207 for refusing to recognize and confirm the Final Order.

WHEREFORE, Minnetonka Insurance Company respectfully prays that an order be made herein pursuant to 9 U.S.C. §§ 9 and 207 confirming the Final Order and directing that judgment be entered thereon, and that the Court grant Minnetonka such other and further relief as the Court deems just and proper.

Dated: New York, New York  
September 21, 2011

WOLLMUTH MAHER & DEUTSCH LLP

By:   
William A. Maher  
Marc L. Abrams  
Adam M. Bialek

500 Fifth Avenue, 12<sup>th</sup> Floor  
New York, New York 10110  
(212) 382-3300

*Attorneys for Petitioner  
Minnetonka Insurance Company*

# **EXHIBIT 1**

In the Matter of the Arbitration between

MINNETONKA INSURANCE COMPANY,

Petitioner,

-and-

Michael Cass (Umpire)  
Caleb Fowler (Arbitrator)  
James Reed (Arbitrator)

CERTAIN UNDERWRITERS AT LLOYD'S,  
LONDON AS SUBSCRIBING REINSURANCE  
AGREEMENT HJJ082 FOR THE \$100,000,000  
EXCESS \$75,000,000 LAYER,, INFRASSURE LTD.,  
AND SCOR UK CO. LTD

Respondents.

**FINAL ORDER**

Pursuant to the above-captioned arbitration between the petitioner Minnetonka Insurance Company and the above-named Respondents, the Panel hereby orders as follows:

1. The Panel's April 11, 2011 Interim Order, and May 17, 2011 e-mail ruling, combine to form the Panel's Final Order with regard to claims control and claims cooperation (referred to respectively in this arbitration as issues one and issues two). These two rulings combined shall have the full and conclusive effect of a final order as to these claims and defenses, and are annexed as Exhibits A and B.
2. The Parties have executed an agreement with regard to Minnetonka's Loss Adjustment Expense claim (referred to as issue three in this arbitration). The parties have accordingly stipulated to the dismissal of this claim, as reflected in the stipulation annexed as Exhibit C.
3. All claims before the Panel have been resolved and, accordingly, this arbitration is concluded and the Panel is dissolved.

Members of the Panel:

Arbitrator:

*Caleb J. Fowler*

Arbitrator: \_\_\_\_\_

Umpire: \_\_\_\_\_

Dated: June 20, 2011

In the Matter of the Arbitration between  
MINNETONKA INSURANCE COMPANY,

Petitioner,

Michael Cass (Umpire)  
Caleb Fowler (Arbitrator)  
James Reed (Arbitrator)

-and-

CERTAIN UNDERWRITERS AT LLOYD'S,  
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2. The Parties have executed an agreement with regard to Minnetonka's Loss Adjustment Expense claim (referred to as issue three in this arbitration). The parties have accordingly stipulated to the dismissal of this claim, as reflected in the stipulation annexed as Exhibit C.
3. All claims before the Panel have been resolved and, accordingly, this arbitration is concluded and the Panel is dissolved.

Members of the Panel:

Arbitrator: \_\_\_\_\_

Arbitrator: \_\_\_\_\_

Umpire: *Michael Cass*

Dated: June 23 2011

Courtney Caryl <ccaryl@gordontilden.com>  
Courtney Caryl <ccaryl@gordontilden.com>  
Courtney Caryl <ccaryl@gordontilden.com>  
Courtney Caryl <ccaryl@gordontilden.com>  
In the Matter of the Arbitration between

MINNETONKA INSURANCE COMPANY,

Petitioner,

Michael Cass (Umpire)  
Caleb Fowler (Arbitrator)  
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-and-

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2. The Parties have executed an agreement with regard to Minnetonka's Loss Adjustment Expense claim (referred to as issue three in this arbitration). The parties have accordingly stipulated to the dismissal of this claim, as reflected in the stipulation annexed as Exhibit C.
3. All claims before the Panel have been resolved and, accordingly, this arbitration is concluded and the Panel is dissolved.

Members of the Panel:

Arbitrator: 

Arbitrator: \_\_\_\_\_

Umpire: \_\_\_\_\_

Dated: June 20, 2011

**EXHIBIT A**

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In the Matter of the Arbitration between	:	
	:	
MINNETONKA INSURANCE COMPANY,	:	
	:	Michael Cass (Umpire)
Petitioner,	:	Caleb Fowler (Arbitrator)
	:	James Reed (Arbitrator)
-and-	:	
	:	
LLOYD'S SYNDICATE SJC-2003,	:	
INFRASSURE LIMITED,	:	
SCOR UK COMPANY LIMITED,	:	
	:	
Respondents,	:	
	:	
<hr/>		X

**INTERIM ORDER**

Pursuant to the above-captioned arbitration proceeding between petitioner Minnetonka Insurance Company ("Minnetonka" or "Petitioner") and the above captioned Respondents (the "Respondents") and in connection with certain flood losses in or around Cedar Rapids, Iowa occurring in June 2008 (the "Loss") sustained by Cargill Inc., and its affiliates ("Cargill"), and following consideration of numerous submissions from the Petitioner and Respondents last dated February 1, 2011 as well as oral argument made by counsel for the parties occurring at the Organizational Meeting on May 10, 2010 as well as via telephone conference on October 20, 2010, the Panel hereby issues the following interim relief:

1. To the extent that Minnetonka reaches settlement with Cargill on terms that were previously agreed to by the Respondents, in accordance with the Claims Control provisions appearing in the Reinsurance Agreements between the Respondents and Minnetonka bearing number HIJ082 (the "Reinsurance Agreements"), are obligated to fund the settlement and

Minnetonka and the Respondents are obligated to fully and completely release each other from any and all claims or disputes between one another as to such settlements and/or payments.

2. To the extent that the Respondents have already funded partial payments to Cargill relating to the Loss, the Respondents shall be deemed to have withdrawn any reservation(s) of their rights as to such payments and are precluded from: (i) asserting that Minnetonka has breached the claims cooperation clause with respect to such payments and/or settlements and/or; (ii) seeking reimbursement from Minnetonka with respect to such payments or settlements.

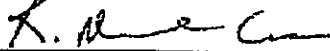
3. In accordance with the representations of the Respondents at the Organizational Meeting, going forward from the date of the Organizational Meeting (May 10, 2010), the Respondents are required to either agree or disagree unconditionally and without any reservations with respect to Minnetonka's proposed settlements, compromises or admissions of liability in connection with the measurement and adjustment of the Loss.

4. Any and all prior reservations of rights issued by the Respondents in connection with the agreed, disagreed, or partially funded amounts with respect to Minnetonka's proposed settlements, compromises or admissions of liability related to the measurement and adjustment of the Loss shall be withdrawn by Respondents or deemed to be withdrawn with prejudice.

5. The parties are directed to meet and confer with respect to the remaining issue of loss adjustment expenses and report back to the Panel as to an appropriate schedule for resolving this issue.

The PANEL is in unanimous agreement with this Interim Order.

FOR AND ON BEHALF OF THE PANEL:

  
R. Michael Cass, Umpire

Dated: April 11, 2011  
Chicago, Illinois

**EXHIBIT B**

**From:** Mikecassre@aol.com  
**Sent:** Tuesday, May 17, 2011 8:56 AM  
**To:** church@bvlaw.net; Bialek, Adam; Abrams, Marc; Maher, William; victory@bvlaw.net  
**Cc:** James\_Reed@us.crawco.com; Caleb@raccoonpoint.com  
**Subject:** Re: Cargill - Cedar Rapids flood loss - DOL 6/9/08 - 508415

Dear Counsel,

The Panel has deliberated and considered the previous submissions from Counsel related to the Claims Cooperation issue and the request from the Parties as to clarification of the Panel's Interim Order executed April 11, 2011. Initially, the Panel confirms that the Interim Order is limited to 'certain flood losses in or around Cedar Rapids, Iowa occurring in June 2008 (the "Loss") sustained by Cargill Inc., and its affiliates ("Cargill").

With respect to prior reservation of rights on any and all prior partial payment requests relating to the Loss, all are withdrawn or deemed to be withdrawn.

At this time, it appears to the Panel that there are no known prior partial payment requests that require resolution of any reservation of rights issue. Accordingly, all discovery requests related to past partial payment requests are irrelevant and do not require involvement of the Panel.

However, if any outstanding reservation of rights or advices that Minnetonka has breached the Claims Cooperation clause exist for previously identified, but not yet submitted, potential payment requests, any such reservation of rights would apply to such potential payment requests. Like the prior reservations, this revived reservation, or any new reservations, may continue only for the reasonable period of time necessary for Reinsurers to accept or deny the payment request.

The Parties are ordered to meet and confer and advise the Panel of the extent of any remaining discovery.

Further, the Parties should provide a status update to the loss adjustment expense issue. Such update should include any agreement on whether this issue will be resolved on the papers or require the August hearing dates.

For the Panel,

Mike Cass, Umpire

**EXHIBIT C**

In the Matter of the Arbitration between

MINNETONKA INSURANCE COMPANY,

Petitioner,

-and-

Michael Cass (Umpire)  
Caleb Fowler (Arbitrator)  
James Reed (Arbitrator)

CERTAIN UNDERWRITERS AT LLOYD'S,  
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EXCESS \$75,000,000 LAYER, INFRASSURE LTD.,  
AND SCOR UK CO. LTD

Respondents.

**STIPULATION**

It is hereby stipulated by and between the parties to this arbitration:

The parties have executed an agreement with regards to Minnetonka's Loss Adjustment Expense claim. All claims before the Panel have been resolved.

AGREED:



William A. Maher, Esq.  
Marc L. Abrams, Esq.  
Wollmuth Maher & Deutsch LLP  
500 Fifth Avenue  
New York, New York 10110  
(212) 382-3300  
*Counsel for Petitioner Minnetonka Insurance Company*



JUNE 16, 2011

Arjang Victory, Esq.  
Timothy G. Church, Esq.  
Bruckmann & Victory, LLP  
420 Lexington Avenue  
New York, New York 10170  
(212) 850-8500  
*Counsel for Respondents Certain Underwriters at Lloyd's,  
London as subscribing Reinsurance Agreement HJJ082 as subscribing the \$100,000,000  
excess \$75,000,000 layer, Infrassure Ltd., and SCOR UK Co. Ltd*

# **EXHIBIT 2**

**REINSURANCE AGREEMENT HJJ082**

between

**MINNETONKA INSURANCE COMPANY** (hereafter called the **COMPANY**)

and

**SCOR UK COMPANY LIMITED** (hereafter called the **REINSURER**)

**WHEREAS**, the **COMPANY** may from time to time insure or accept reinsurance from companies insuring Gargill, Incorporated, and/or its subsidiaries or affiliated companies, joint ventures, and others for whom these corporations may have the right or obligation to insure (hereafter called the **INSURED**). Such insurance or reinsurance covers Property Damage and Time Element risks situated anywhere in the world (such insurance or reinsurance hereinafter called the **POLICIES**); and

**WHEREAS**, the **REINSURER** is in the business and desirous of reinsuring Property Damage, Time Element, and other coverages as may be from time to time agreed upon between the **COMPANY** and the **REINSURER**; and

**WHEREAS**, the **COMPANY** is desirous of reinsuring its liability on an excess of loss basis under the **POLICIES**; and

**NOW THEREFORE**, the **COMPANY** and the **REINSURER** do hereby mutually agree upon the following:

**COVERAGE**

This reinsurance shall be subject to the same terms and conditions as the **COMPANY's** Policy No. CGL0045 and any insurance or reinsurance accepted by the **COMPANY** relative to this reinsurance placement.

**ATTACHMENT**

**REINSURER** attachment (**REINSURANCE ACCEPTED**) is on a ground up occurrence basis as if there are no deductibles on the **POLICIES** except where limits are on an aggregate basis. Erosion of those limits which are on an aggregate basis move the **REINSURER's** attachment downward.

**FOLLOW THE FORTUNES**

In all things coming within the scope of this agreement, the **REINSURER** shall share to the extent of its interest the fortunes of the **COMPANY** and shall be liable for its proportion of any loss, expense and technical reserves for which the **COMPANY** may directly or indirectly become responsible.

All loss settlements made by the **COMPANY**, whether under the strict policy conditions or by way of compromise, shall be binding upon the **REINSURER** in proportion to its participation.

SCOR UK  
COMPANY LIMITED  
M

REINSURANCE AGREEMENT HJJ082

Notwithstanding the above, no ex-gratia payment by the COMPANY shall be binding upon the REINSURER unless agreed in writing in advance by the REINSURER.

This entire FOLLOW THE FORTUNES clause is subordinate to the CLAIMS COOPERATION clause contained in this agreement.

**CLAIMS COOPERATION**

The COMPANY shall have the responsibility to investigate, defend, negotiate settlements and arbitrate, as necessary, all claims and lawsuits related to POLICIES insured or reinsured by the COMPANY and reinsured under this Agreement. All information developed during the adjustment process will be reported simultaneously to the COMPANY and the REINSURER. REINSURER or its authorized representative(s) shall have the right, at its own expense, to independently associate with the COMPANY in the defense of any claim, suit, adjustment, or other proceeding involving or which may involve the reinsurance provided under this Agreement, and the COMPANY and the REINSURER shall cooperate in every respect in the defense of any such claim, suit, adjustment, or proceeding.

The COMPANY, upon knowledge of any circumstances which may give rise to a claim under this REINSURANCE ACCEPTED, shall advise the REINSURER as soon as practical of such potential claim.

**DESIGNATED CLAIMS MANAGEMENT FIRM**

It is agreed that IRMG Global Claims Services will represent the COMPANY on all matters relative to selection of adjusters, assessors, surveyors, engineers, accountants, or other experts in connection with claims investigation, management, and settlement all of which is conditional on the terms of the CLAIMS COOPERATION clause.

IRMG Global Claims Services  
A Division of Aon International Risk Management Group

Jerry R. Simmons                      Phone: (440)746-8964  
Senior Vice President              Fax: (440)740-0172  
Manager of Property Claims        Email: jerry.simmons@irmg.com  
Grand Bay II - Suite 102  
6900 South Edgerton Road  
Cleveland, Ohio 44141



**CLAIM AND LOSS ADJUSTMENT EXPENSES**

All fees, expenses, costs and all other disbursements incurred by adjusters, assessors, surveyors or other experts on behalf of the COMPANY in this connection shall be made part of the claim.

**CLAIM AND LOSS ADJUSTMENT EXPENSE PAYMENTS**

Payments are due within thirty days from the date in which the REINSURER receives a request for payment.

All payments should be made directly to the COMPANY, preferably by wire transfer, to:

REINSURANCE AGREEMENT PJ7082

Bank: JF Morgan Chase Bank  
Acct: 50-23432  
Address: New York  
ABA: 021000021  
Ref: Minnetonka Insurance Company/MS 12  
Reference: (Specify Claim & Reinsurance Co. Name)

Advice must be given to Ann Kloempken at the COMPANY's office before 1:00PM CST on the day of funds transfer.

Ann Kloempken  
Phone: (952)742-7303  
Fax: (952)742-7990  
Email: Ann\_Kloempken@cargill.com

**SUBROGATION**

Subrogation shall be per Minnetonka Insurance Company Policy No. CGL0045, Section IV, **GENERAL CONDITIONS**, Item 6. **SUBROGATION AND SUBROGATION WAIVER**, with respect to the COMPANY and the INSURED; however, it is agreed that reinsurers will participate in subrogation on a top down basis if multiple reinsured layers are involved in the claim, unless there is mutual agreement among the reinsurers to share on an alternative basis.

**CANCELLATION / TERMINATION**

This agreement may be canceled at any time by mutual consent or, on demand without mutual consent, by either the COMPANY or the REINSURER giving ninety days notice of termination in writing to the other party.

Unless the COMPANY agrees to the contrary, the REINSURER shall upon termination of this agreement continue to be liable for its proper share of the risks ceded and/or losses incurred prior to the date of termination.

**LOSS RESERVES**

It is agreed that the REINSURER will provide collateral, at the request of the COMPANY, equal to the REINSURER's portion of any outstanding loss reserves which must be collateralized by the COMPANY to satisfy competent regulatory authorities on business subject to this Agreement.



REINSURANCE AGREEMENT HJJ082

**ERRORS AND OMISSIONS**

Errors of involuntary or inadvertent omission shall not in any way invalidate the liability of the REINSURER under this agreement which would have attached had no errors or omissions occurred. Such errors or omissions shall be corrected immediately upon discovery.

**PREMIUM ADJUSTMENT**

It is agreed that the premium for this REINSURANCE ACCEPTED shall be subject to adjustment for an acquisition or divestiture by the INSURED if such acquisition or divestiture (in a single transaction) has insured values of more than 5% of the INSURED's total insured values relative to this reinsurance placement. Such premium adjustment shall be computed on a pro rata basis from the date of acquisition or disposition to the end of the current premium period.

**ACCESS TO RECORDS**

The REINSURER or its duly authorized representatives shall have the right to examine, at the offices of the COMPANY and at a reasonable time, all books and records of the COMPANY relating to business which is the subject of this Agreement.

**ARBITRATION**

Any controversy or claim arising out of or relating to this Agreement between the COMPANY and the REINSURER, which cannot be resolved in the normal course of business, shall be submitted to and determined by binding arbitration.

One arbitrator shall be chosen by the COMPANY and one by the REINSURER, and the two arbitrators shall jointly select an umpire. Each party must appoint its arbitrator within thirty days of a written demand for arbitration. If the two arbitrators cannot mutually agree on the selection of an umpire within thirty days after selection of the arbitrators, either party may request that the American Arbitration Association appoint the umpire.

Each party shall submit its case to the umpire within thirty days after selection of the umpire unless the period is extended by mutual consent of the arbitrators. The arbitration shall be decided in accordance with the terms of this Agreement and shall take into account usage of the reinsurance business.

The COMPANY and the REINSURER shall each bear all its own expenses of arbitration and the costs of its selected arbitrator and others it may hire to help and advise in the process. The cost of the umpire shall be borne equally by the COMPANY and the REINSURER unless the arbitrators and the umpire decide otherwise. Arbitration shall take place in Minneapolis, Minnesota or at a location otherwise agreed upon by both parties. The language of the arbitration shall be English. The duty to arbitrate shall survive the cancellation or termination of this agreement.



REINSURANCE AGREEMENT HJJ082

**INSOLVENCY**

In the event of the insolvency of the **COMPANY**, the liquidator or receiver or statutory successor of the insolvent **COMPANY** shall give written notice to the **REINSURER** of a claim against the **COMPANY** on **POLICIES** reinsured within a reasonable time after such claim. The **REINSURER** may investigate such claim and interpose, at its expense, in the proceeding where such claim is to be adjudicated any defense or defenses which may be deemed available to the **COMPANY** or its liquidator or receiver or statutory successor. The expense thus incurred by the **REINSURER** shall be chargeable, subject to court approval, against the **COMPANY** as part of the expense of liquidations, to the extent of the proportionate share of the benefit which may accrue to the **COMPANY** as a result of the defense undertaken by the **REINSURER**.

Further, the **REINSURER** shall be entitled in such circumstances to remit its due proportion of claims payable directly to the original **INSURED** of the **COMPANY**. It is understood that the **REINSURER** shall obtain a discharge jointly in the name of the **COMPANY** and the **REINSURER** to the extent of the amount paid and such payment shall discharge the liability of the **REINSURER** to the **COMPANY**.

If the **REINSURER** is at any time placed in the hands of a receiver, assignee or trustee for the purposes of liquidation on account of insolvency, the **REINSURER** shall give notice to the **COMPANY** of the said happening. In such event, the **REINSURER** assigns to the **COMPANY** all benefit and interest in or under its retrocession treaties so far as they relate to liabilities assumed by the **REINSURER** under this Agreement together with the right so far as may be necessary, to demand performance or sue for and enforce the same in the name of the **REINSURER** to hold the same unto the **COMPANY** absolutely.

Following the insolvency of either the **COMPANY** or the **REINSURER** each party shall be entitled to deduct from the other any amounts which may be or may become due to the other party under this Agreement.

**PARAMOUNT CLAUSE**

It is understood and agreed that the conditions contained in this **REINSURANCE AGREEMENT** shall override anything that may be at variance or contradictory to any reinsurance binders, cover notes, or contracts issued by the **REINSURER**.

**AMENDMENTS**

This Agreement may be amended by mutual consent of the parties expressed by addendum; and such addendum, when executed by both parties, shall be deemed to be an integral part of this Agreement and binding on the parties hereto.



REINSURANCE AGREEMENT #11082

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives:

In \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

WITNESS:

SCOR UK COMPANY LIMITED

[Signature]  
16/9/08

\_\_\_\_\_

In Minnetonka, Minnesota, this 29th day of September, 2008.

WITNESS:

MINNETONKA INSURANCE COMPANY

[Signature]

[Signature]



16/9/08

**REINSURANCE DECLARATIONS**

**ADDENDUM No. 1**, Attached to and forming part of REINSURANCE AGREEMENT AHJ080

<b>COMPANY:</b> Minnetonka Insurance Company
<b>REINSURER:</b> SCOR UK Company Limited
<b>INSURED:</b> Cargill, Incorporated, et al
<b>TERM</b> From: March 1, 2008 at 0001 Hrs. Standard Time at the Insured location To: March 1, 2009 at 0001 Hrs. Standard Time at the Insured location
<b>REINSURANCE ACCEPTED:</b> 11% part of \$525 million excess of \$75 million
<b>GROSS PREMIUM:</b> \$4,000,000 (100%)
<b>COMMISSION:</b> Nil
<b>NET REINSURANCE PREMIUM:</b> \$440,000 (for order)

SCOR UK COMPANY LIMITED

MINNETONKA INSURANCE COMPANY

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

Date: Sept. 29, 2008



*9/16/08*

ADDENDUM No. A Attached to and forming part of REINSURANCE AGREEMENT AHJ080

As respects Minnetonka Insurance Company's Policy No. CGL0045 (the policy under which this reinsurance has been accepted), Section II, **SPECIAL CONDITIONS**, Item 3. **LIMIT OF LIABILITY**, is hereby amended to read as follows:

3. **LIMIT OF LIABILITY**

The limit of liability per loss occurrence is \$95 million for all locations except:

- A. Extra Expense for all locations - \$75 million.
- B. Contingent Business Interruption for all locations - \$75 million. See note under Item 3.C. Contingent Extra Expense, in regard to flood coverage.
- C. Contingent Extra Expense for all locations - \$75 million. The combined Contingent Business Interruption and Contingent Extra Expense limit is \$75 million per occurrence and \$75 million annual aggregate for the peril of flood that causes delay or interruption of river barge transportation.
- D. Off Premises Power and Communications - \$75 million.
- E. Tenants' and Neighbors' Liability - \$50 million.
- F. \$300 million per occurrence and in the annual aggregate as respects the peril of flood, except \$100 million per occurrence and in the annual aggregate for flood in Netherlands.
- G. \$300 million per occurrence and in the annual aggregate as respects the peril of earthquake, except \$100 million per occurrence and in the annual aggregate for California and \$100 million per occurrence and in the annual aggregate for Japan.
- H. Decontamination and Cost of Clean Up Expense - \$40 million. Radioactive contamination clean up shall be included in this sublimit.
- I. Malicious and Accidental Damage - USD55 million.
- J. Civil and Military Authorities and Ingress/Egress separately - 90 days.

The sublimits noted above in A. through J. are inclusive of the Deductible/Reimbursement amount and are inclusive of, not in addition to, the overall limit of liability per loss occurrence as stated above.

SCOR UK COMPANY LIMITED

MINNETONKA INSURANCE COMPANY

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

*Sharon Donovan*  
\_\_\_\_\_  
Date: *Sept. 29, 2008*

SCOR UK COMPANY LIMITED  
*16/9/08*

ADDENDUM No. B Attached to and forming part of REINSURANCE AGREEMENT AHJ080

As respects Minnetonka Insurance Company's Policy No. CGL0045 (the policy under which this reinsurance has been accepted), Section II, **SPECIAL CONDITIONS**, Item 7, **PROPERTY EXCLUDED**, the following are hereby added:

- J. Underground shafts, tunnels, declines, slopes and the like, except plant and equipment situated therein that is not otherwise excluded and for which a value has been included in values reported.
- K. Unmined minerals, ore, and coal.
- L. Electrical and distribution lines located outside of 1,000 feet from the Insured premises.

SCOR UK COMPANY LIMITED

MINNETONKA INSURANCE COMPANY

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

*Sharon D. Rowland*  
\_\_\_\_\_  
Date: *Sept. 29, 2008*

SCOR UK COMPANY LIMITED  
*16/1/08*

**ADDENDUM No. C Attached to and forming part of REINSURANCE AGREEMENT AHJ080**

As respects Minnetonka Insurance Company's Policy No. CGL0045 (the policy under which this reinsurance has been accepted), Section II, **SPECIAL CONDITIONS**, Item 8. **PERILS EXCLUDED**, the following amendments shall apply:

- Exclusion A. 5. is for the purposes of this Reinsurance, amended to read as follows and ceases to read as previously written:
  - A. 5. dampness of atmosphere, evaporation, wet or dry rot, mold, mildew, fungus, spores or other microorganism of any type, nature, or description, including but not limited to any substance whose presence poses an actual or potential threat to human health;

**MICROORGANISM EXCLUSION – Absolute**

This Policy does not insure any loss, damage, claim, cost, expense or other sum directly or indirectly arising out of or relating to:

mold, mildew, fungus, spores or other microorganism of any type, nature, or description, including but not limited to any substance whose presence poses an actual or potential threat to human health;

This exclusion applies to buildings only regardless whether there is (i) any physical loss or damage to insured property; (ii) any insured peril or cause, whether or not contributing concurrently or in any sequence; (iii) any loss of use, occupancy, or functionality; or (iv) any action required, including but not limited to repair, replacement, removal, cleanup, abatement, disposal, relocation, or steps taken to address medical or legal concerns.

This exclusion replaces and supersedes any provision in the Policy that provides insurance, in whole or in part, for these matters.

Notwithstanding the above, this exclusion shall apply to buildings only and shall not apply to contents contained therein.

- As respects exclusion A.13., product recall is specifically excluded from coverage herein, regardless if such loss or damage is a result of a peril not otherwise excluded by this Policy, or a peril not otherwise excluded ensues.
- Exclusion C. shall be amended to read as follows:
  - C. This policy does not insure any loss of, damage to, destruction, distortion, interruption, erasure, corruption or alteration of Electronic Data caused by Computer Virus, nor any resulting time element loss.
    - 1. Electronic Data means facts, concepts, code or any other information converted to a form useable for communication, interpretation or processing by computers or other electronic or electromechanical data processing or electronically controlled equipment and includes programs, software and other code instructions for the processing or manipulation of other data or the direction and manipulation of any equipment.



ADDENDUM No. C (Continued)

2. Computer Virus means any corrupting, harmful or otherwise disruptive instructions or code including any unauthorized instructions or code, programmatic or otherwise that propagate through any computer or computer systems, networks, or groups of whatever nature. Computer Virus includes, but is not limited to, "Trojan Horses", "worms" and "time or logic bombs".

- Exclusion E. shall be amended to read as follows:

E. Notwithstanding any provision to the contrary within this reinsurance or any endorsements thereto it is agreed that this reinsurance excludes loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any of the following regardless of any other cause or event contributing concurrently or in any other sequence to the loss:

1. war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power; or
2. any Act of Terrorism.

For the purpose of this clause an Act of Terrorism means an act, including but not limited to the use of force or violence and/or the threat thereof, of any person or group(s) or persons, whether acting alone or on behalf of or in connection with any organization(s) or government(s), committed for political, religious, ideological or similar purposes including the intention to influence any government and/or to put the public, or any section of the public, in fear.

This clause also excludes loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to (1) and/or (2) above.

If the Reinsurers allege that by reason of this exclusion, any loss, damage, cost or expense is not covered by this reinsurance the burden of proving the contrary shall be upon the Company.

In the event any portion of this clause is found to be invalid or unenforceable, the remainder shall remain in full force and effect.

- The following exclusions are hereby added:

F. It is agreed that this reinsurance excludes loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with the actual or threatened malicious use of pathogenic or poisonous biological or chemical materials regardless of any other cause or event contributing concurrently or in any other sequence thereto.



ADDENDUM No. C (Continued)

G. Creep and heave as respects underground mining.

SCOR UK COMPANY LIMITED

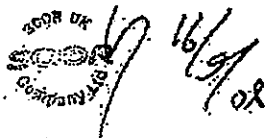
MINNETONKA INSURANCE COMPANY

\_\_\_\_\_

*Debra D. Brown*

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

Date: *Sept. 29, 2008*

  
SCOR UK  
16/9/08

ADDENDUM No. D Attached to and forming part of REINSURANCE AGREEMENT AH208Q

As respects Minnetonka Insurance Company's Policy No. CGL0045 (the policy under which this reinsurance has been accepted), ENDORSEMENT #9 - CERTIFIED TERRORISM ENDORSEMENT TERRORISM RISK INSURANCE PROGRAM REAUTHORIZATION ACT OF 2007 is hereby deleted.

SCOR UK COMPANY LIMITED

MINNETONKA INSURANCE COMPANY

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

*Maureen Donovan*  
\_\_\_\_\_  
Date: *Sept. 29, 2008*

SCOR UK  
COMPANY LIMITED  
*10/16/08*

ADDENDUM No. E Attached to and forming part of REINSURANCE AGREEMENT AHJ080

As respects REINSURANCE AGREEMENT AHJ080, the CLAIMS COOPERATION clause of the Reinsurance Agreement is deleted and replaced by the following CLAIMS CONTROL clause. In the event there is any other reference to Claims Cooperation in the Reinsurance Agreement, it shall be amended to read Claims Control.

CLAIMS CONTROL

Notwithstanding anything to the contrary contained in this Reinsurance Agreement, it is a condition precedent to REINSURER'S liability under this reinsurance that:

- A. The COMPANY shall give to the REINSURER written notice as soon as reasonably practicable of any claim made against the COMPANY in respect of the business reinsured hereby or of its being notified of any circumstances which could give rise to such a claim.
- B. The COMPANY shall furnish the REINSURER with all information known to the COMPANY in respect of claims or possible claims notified in accordance with (A) above and shall thereafter keep the REINSURER fully informed as regards all developments relating thereto as soon as reasonably practicable.
- C. The REINSURER shall have the right at any time to appoint adjusters and/or representatives to act on their behalf to control all investigations, adjustments and settlements in connection with any claim notified to the REINSURER as aforesaid.
- D. The COMPANY shall cooperate with the REINSURER and any other person or persons designated by the REINSURER in the investigation, adjustment and settlement of such claim.
- E. No settlement and/or compromise shall be made and no liability admitted by the COMPANY without prior agreement of the REINSURER.

SCOR-UK COMPANY LIMITED

MINNETONKA INSURANCE COMPANY

\_\_\_\_\_

Sharon Donnan

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

Date: Sept. 29, 2008

A circular stamp for SCOR-UK COMPANY LIMITED. The text 'SCOR-UK COMPANY LIMITED' is arranged in a circle around the center. In the center, there are handwritten initials 'SD' and a date '16/9/08' written next to them.

# **EXHIBIT 3**

**REINSURANCE AGREEMENT HJJ082**

between

**MINNETONKA INSURANCE COMPANY** (hereafter called the **COMPANY**)

and

**LLOYD'S SYNDICATE SJC/2003** (signing on behalf of all other participating underwriters (hereafter called the **REINSURER**))

**WHEREAS**, the **COMPANY** may from time to time insure or accept reinsurance from companies insuring Cargill, Incorporated, and/or its subsidiaries or affiliated companies, joint ventures, and others for whom these corporations may have the right or obligation to insure (hereafter called the **INSURED**). Such insurance or reinsurance covers Property Damage and Time Element risks situated anywhere in the world (such insurance or reinsurance hereinafter called the **POLICIES**); and

**WHEREAS**, the **REINSURER** is in the business and desirous of reinsuring Property Damage, Time Element, and other coverages as may be from time to time agreed upon between the **COMPANY** and the **REINSURER**; and

**WHEREAS**, the **COMPANY** is desirous of reinsuring its liability on an excess of loss basis under the **POLICIES**; and

**NOW THEREFORE**, the **COMPANY** and the **REINSURER** do hereby mutually agree upon the following:

**COVERAGE**

This reinsurance shall be subject to the same terms and conditions as the **COMPANY**'s Policy No. CGL0045 and any insurance or reinsurance accepted by the **COMPANY** relative to this reinsurance placement.

**ATTACHMENT**

**REINSURER** attachment (**REINSURANCE ACCEPTED**) is on a ground up occurrence basis as if there are no deductibles on the **POLICIES** except where limits are on an aggregate basis. Erosion of those limits which are on an aggregate basis move the **REINSURER**'s attachment downward.

**FOLLOW THE FORTUNES**

In all things coming within the scope of this agreement, the **REINSURER** shall share to the extent of its interest the fortunes of the **COMPANY** and shall be liable for its proportion of any loss, expense and technical reserves for which the **COMPANY** may directly or indirectly become responsible.

A handwritten signature in black ink, appearing to be a stylized name, possibly "Lloyd's", written over a faint circular stamp or mark.

REINSURANCE AGREEMENT HJJ082

All loss settlements made by the **COMPANY**, whether under the strict policy conditions or by way of compromise, shall be binding upon the **REINSURER** in proportion to its participation.

Notwithstanding the above, no ex-gratia payment by the **COMPANY** shall be binding upon the **REINSURER** unless agreed in writing in advance by the **REINSURER**.

This entire FOLLOW THE FORTUNES clause is subordinate to the CLAIMS COOPERATION clause contained in this agreement.

**CLAIMS COOPERATION**

The **COMPANY** shall have the responsibility to investigate, defend, negotiate settlements and arbitrate, as necessary, all claims and lawsuits related to **POLICIES** insured or reinsured by the **COMPANY** and reinsured under this Agreement. All information developed during the adjustment process will be reported simultaneously to the **COMPANY** and the **REINSURER**. **REINSURER** or its authorized representative(s) shall have the right, at its own expense, to independently associate with the **COMPANY** in the defense of any claim, suit, adjustment, or other proceeding involving or which may involve the reinsurance provided under this Agreement, and the **COMPANY** and the **REINSURER** shall cooperate in every respect in the defense of any such claim, suit, adjustment, or proceeding.

The **COMPANY**, upon knowledge of any circumstances which may give rise to a claim under this **REINSURANCE ACCEPTED**, shall advise the **REINSURER** as soon as practical of such potential claim.

**DESIGNATED CLAIMS MANAGEMENT FIRM**

It is agreed that IRMG Global Claims Services will represent the **COMPANY** on all matters relative to selection of adjusters, assessors, surveyors, engineers, accountants, or other experts in connection with claims investigation, management, and settlement all of which is conditional on the terms of the CLAIMS COOPERATION clause.

IRMG Global Claims Services  
A Division of Aon International Risk Management Group

Jerry R. Simmons                      Phone: (440)746-8964  
Senior Vice President              Fax: (440)740-0172  
Manager of Property Claims      Email: jerry.simmons@irmg.com  
Grand Bay II – Suite 102  
6900 South Edgerton Road  
Cleveland, Ohio 44141

**CLAIM AND LOSS ADJUSTMENT EXPENSES**

All fees, expenses, costs and all other disbursements incurred by adjusters, assessors, surveyors or other experts on behalf of the **COMPANY** in this connection shall be made part of the claim.

REINSURANCE AGREEMENT HJJ082

**CLAIM AND LOSS ADJUSTMENT EXPENSE PAYMENTS**

Payments are due within thirty days from the date in which the REINSURER receives a request for payment.

All payments should be made directly to the COMPANY, preferably by wire transfer, to:

Bank: JP Morgan Chase Bank  
Acct: 50-23432  
Acct Name: Cargill, Inc.  
Address: New York  
ABA: 021000021  
Ref: Minnetonka Insurance Company/MS 12  
Reference: (Specify Claim & Reinsurance Co. Name)

Advice must be given to Ann Kloempken at the COMPANY's office before 1:00PM CST on the day of funds transfer.

Ann Kloempken  
Phone: (952)742-7303  
Fax: (952)742-7990  
Email: Ann\_Kloempken@cargill.com

**SUBROGATION**

Subrogation shall be per Minnetonka Insurance Company Policy No. CGL0045, Section IV, **GENERAL CONDITIONS**, Item 6, **SUBROGATION AND SUBROGATION WAIVER**, with respect to the COMPANY and the INSURED; however, it is agreed that reinsurers will participate in subrogation on a top down basis if multiple reinsured layers are involved in the claim, unless there is mutual agreement among the reinsurers to share on an alternative basis.

**CANCELLATION / TERMINATION**

This agreement may be canceled at any time by mutual consent or, on demand without mutual consent, by either the COMPANY or the REINSURER giving ninety days notice of termination in writing to the other party.

Unless the COMPANY agrees to the contrary, the REINSURER shall upon termination of this agreement continue to be liable for its proper share of the risks ceded and/or losses incurred prior to the date of termination.

**LOSS RESERVES**

It is agreed that the REINSURER will provide collateral, at the request of the COMPANY, equal to the REINSURER's portion of any outstanding loss reserves which must be collateralized by the COMPANY to satisfy competent regulatory authorities on business subject to this Agreement.

REINSURANCE AGREEMENT HJJ082

**ERRORS AND OMISSIONS**

Errors of involuntary or inadvertent omission shall not in any way invalidate the liability of the REINSURER under this agreement which would have attached had no errors or omissions occurred. Such errors or omissions shall be corrected immediately upon discovery.

**PREMIUM ADJUSTMENT**

It is agreed that the premium for this REINSURANCE ACCEPTED shall be subject to adjustment for an acquisition or divestiture by the INSURED if such acquisition or divestiture (in a single transaction) has insured values of more than 5% of the INSURED's total insured values relative to this reinsurance placement. Such premium adjustment shall be computed on a pro rata basis from the date of acquisition or disposition to the end of the current premium period.

**ACCESS TO RECORDS**

The REINSURER or its duly authorized representatives shall have the right to examine, at the offices of the COMPANY and at a reasonable time, all books and records of the COMPANY relating to business which is the subject of this Agreement.

**ARBITRATION**

Any controversy or claim arising out of or relating to this Agreement between the COMPANY and the REINSURER, which cannot be resolved in the normal course of business, shall be submitted to and determined by binding arbitration.

One arbitrator shall be chosen by the COMPANY and one by the REINSURER, and the two arbitrators shall jointly select an umpire. Each party must appoint its arbitrator within thirty days of a written demand for arbitration. If the two arbitrators cannot mutually agree on the selection of an umpire within thirty days after selection of the arbitrators, either party may request that the American Arbitration Association appoint the umpire.

Each party shall submit its case to the umpire within thirty days after selection of the umpire unless the period is extended by mutual consent of the arbitrators. The arbitration shall be decided in accordance with the terms of this Agreement and shall take into account usage of the reinsurance business.

The COMPANY and the REINSURER shall each bear all its own expenses of arbitration and the costs of its selected arbitrator and others it may hire to help and advise in the process. The cost of the umpire shall be borne equally by the COMPANY and the REINSURER unless the arbitrators and the umpire decide otherwise. Arbitration shall take place in Minneapolis, Minnesota or at a location otherwise agreed upon by both parties. The language of the arbitration shall be English. The duty to arbitrate shall survive the cancellation or termination of this agreement.

REINSURANCE AGREEMENT HJJ082

**INSOLVENCY**

In the event of the insolvency of the **COMPANY**, the liquidator or receiver or statutory successor of the insolvent **COMPANY** shall give written notice to the **REINSURER** of a claim against the **COMPANY** on **POLICIES** reinsured within a reasonable time after such claim. The **REINSURER** may investigate such claim and interpose, at its expense, in the proceeding where such claim is to be adjudicated any defense or defenses which may be deemed available to the **COMPANY** or its liquidator or receiver or statutory successor. The expense thus incurred by the **REINSURER** shall be chargeable, subject to court approval, against the **COMPANY** as part of the expense of liquidations, to the extent of the proportionate share of the benefit which may accrue to the **COMPANY** as a result of the defense undertaken by the **REINSURER**.

Further, the **REINSURER** shall be entitled in such circumstances to remit its due proportion of claims payable directly to the original **INSURED** of the **COMPANY**. It is understood that the **REINSURER** shall obtain a discharge jointly in the name of the **COMPANY** and the **REINSURER** to the extent of the amount paid and such payment shall discharge the liability of the **REINSURER** to the **COMPANY**.

If the **REINSURER** is at any time placed in the hands of a receiver, assignee or trustee for the purposes of liquidation on account of insolvency, the **REINSURER** shall give notice to the **COMPANY** of the said happening. In such event, the **REINSURER** assigns to the **COMPANY** all benefit and interest in or under its retrocession treaties so far as they relate to liabilities assumed by the **REINSURER** under this Agreement together with the right so far as may be necessary, to demand performance or sue for and enforce the same in the name of the **REINSURER** to hold the same unto the **COMPANY** absolutely.

Following the insolvency of either the **COMPANY** or the **REINSURER** each party shall be entitled to deduct from the other any amounts which may be or may become due to the other party under this Agreement.

**PARAMOUNT CLAUSE**

It is understood and agreed that the conditions contained in this **REINSURANCE AGREEMENT** shall override anything that may be at variance or contradictory to any reinsurance binders, cover notes, or contracts issued by the **REINSURER**.

**AMENDMENTS**

This Agreement may be amended by mutual consent of the parties expressed by addendum; and such addendum, when executed by both parties, shall be deemed to be an integral part of this Agreement and binding on the parties hereto.

REINSURANCE AGREEMENT HJJ082

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives:

In \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

WITNESS:

LLOYD'S SYNDICATE SJC/2003 (signing on behalf of all other participating underwriters)

*[Handwritten signature]*  
2/9/08

In Minnetonka, Minnesota, this 2nd day of September, 2008.

WITNESS:

MINNETONKA INSURANCE COMPANY.

*Sandra Kenney*

*Chara Bonner*

**REINSURANCE DECLARATIONS**

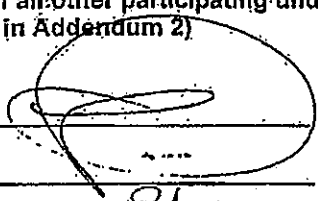
**ADDENDUM No. 1** Attached to and forming part of REINSURANCE AGREEMENT HJJ082

<b>COMPANY:</b> Minnetonka Insurance Company
<b>REINSURER:</b> Lloyd's Syndicate 2003 and Others as Detailed in Addendum No. 2
<b>INSURED:</b> Cargill, Incorporated, et al
<b>TERM</b> From: March 1, 2008 at 0001 Hrs. Standard Time at the insured location To: March 1, 2009 at 0001 Hrs. Standard Time at the insured location
<b>REINSURANCE ACCEPTED:</b>  29.5% of \$100 million excess of \$75 million
<b>GROSS PREMIUM:</b> \$772,900
<b>COMMISSION:</b> Nil
<b>NET REINSURANCE PREMIUM:</b> \$772,900

**LLOYD'S SYNDICATE SJC/2003** (signing on behalf of all other participating underwriters as detailed in Addendum 2)

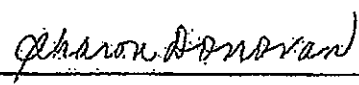
**MINNETONKA INSURANCE COMPANY**

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



2/9/08

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



Sept. 2, 2008

**ADDENDUM No. 2 Attached to and forming part of REINSURANCE AGREEMENT HJJ082**

**PARTICIPATING REINSURERS (\$100 million excess of \$75 million)**

AML 2001 - Amlin Underwriting Limited	10.08403
AUL 1274 - Antares	10.08403
CNP 4444 - Canopus Managing Agents Limited	16.80671
Ecclesiastical Insurance Office	2.52102
KLN 510 - R.J. Kiln & Co. Limited	6.72268
MKL 3000 - Merkel Syndicate Management Limited	7.56302
MSP 318 - Beaufort Underwriting Agency Limited	4.20169
RTH 1414 - Ascot Underwriting Limited	16.80672
SJC 2003 - Gatlin Underwriting Limited	16.80674
TAL 1183 - Talbot Underwriting Ltd.	8.40336
	<u>100.0000%</u>
	of order herein

**LLOYD'S SYNDICATE SJC/2003 (signing  
on behalf of all other participating underwriters  
as detailed in Addendum 2)**

**MINNETONKA INSURANCE COMPANY**

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

*Aaron Donovan*  
Date: *Sept. 2, 2008*

ADDENDUM No. A Attached to and forming part of REINSURANCE AGREEMENT HJJ082

As respects Minnetonka Insurance Company's Policy No. CGL0045 (the policy under which this reinsurance has been accepted); Section II, SPECIAL CONDITIONS, Item 3, LIMIT OF LIABILITY, is hereby amended to read as follows:

3. LIMIT OF LIABILITY

The limit of liability per loss occurrence is \$995 million for all locations except:

- A. Extra Expense for all locations - \$75 million.
- B. Contingent Business Interruption for all locations - \$75 million. See note under Item 3.C. Contingent Extra Expense, in regard to flood coverage.
- C. Contingent Extra Expense for all locations - \$75 million. The combined Contingent Business Interruption and Contingent Extra Expense limit is \$75 million per occurrence and \$75 million annual aggregate for the peril of flood that causes delay or interruption of river barge transportation.
- D. Off Premises Power and Communications - \$75 million.
- E. Tenants' and Neighbors' Liability - \$50 million.
- F. \$300 million per occurrence and in the annual aggregate as respects the peril of flood, except: \$100 million per occurrence and in the annual aggregate for flood in Netherlands.
- G. \$300 million per occurrence and in the annual aggregate as respects the peril of earthquake, except: \$100 million per occurrence and in the annual aggregate for California and \$100 million per occurrence and in the annual aggregate for Japan.
- H. Decontamination and Cost of Clean Up Expense: \$40 million.
- I. Malicious and Accidental Damage - \$55 million.
- J. Civil and Military Authorities and Ingress/Egress separately - 90 days.

The sublimits noted above in A. through J. are inclusive of the Deductible/Reimbursement amount and are inclusive of, not in addition to, the overall limit of liability per loss occurrence as stated above.

LLOYD'S SYNDICATE SJC/2003 (signing  
on behalf of all other participating underwriters  
as detailed in Addendum 2)

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

MINNETONKA INSURANCE COMPANY

\_\_\_\_\_  
*Sharon Donovan*

Date: Sept. 2, 2008

**ADDENDUM No. B Attached to and forming part of REINSURANCE AGREEMENT HJJ082**

As respects Minnetonka Insurance Company's Policy No. CGL0045 (the policy under which this reinsurance has been accepted), Section II, **SPECIAL CONDITIONS**, Item 8, **PERILS EXCLUDED**, the following amendments shall apply:

- Exclusion A. 5. is for the purposes of this Reinsurance, amended to read as follows and ceases to read as previously written:
  - A. 5. dampness of atmosphere, evaporation, wet or dry rot, mold, mildew, fungus, spores or other microorganism of any type, nature, or description, including but not limited to any substance whose presence poses an actual or potential threat to human health;

**MICROORGANISM EXCLUSION – Absolute**

This Policy does not insure any loss, damage, claim, cost, expense or other sum directly or indirectly arising out of or relating to:

mold, mildew, fungus, spores or other microorganism of any type, nature, or description, including but not limited to any substance whose presence poses an actual or potential threat to human health;

This exclusion applies to buildings only regardless whether there is (i) any physical loss or damage to insured property; (ii) any insured peril or cause, whether or not contributing concurrently or in any sequence; (iii) any loss of use, occupancy, or functionality; or (iv) any action required, including but not limited to repair, replacement, removal, cleanup, abatement, disposal, relocation, or steps taken to address medical or legal concerns.

This exclusion replaces and supersedes any provision in the Policy that provides insurance, in whole or in part, for these matters.

Notwithstanding the above, this exclusion shall apply to buildings only and shall not apply to contents contained therein.

- As respects exclusion A.13., product recall is specifically excluded from coverage herein, regardless if such loss or damage is a result of a peril not otherwise excluded by this Policy, or a peril not otherwise excluded ensues.
- Exclusion C. shall be amended to read as follows:
  - C. This policy does not insure any loss of, damage to, destruction, distortion, interruption, erasure, corruption or alteration of Electronic Data caused by Computer Virus, nor any resulting time element loss.
    - 1. Electronic Data means facts, concepts, code or any other information converted to a form useable for communication, interpretation or processing by computers or other electronic or electromechanical data processing or electronically controlled equipment and includes programs, software and other



ADDENDUM No. B (Continued)

code instructions for the processing or manipulation of other data or the direction and manipulation of any equipment.

2. Computer Virus means any corrupting harmful or otherwise disruptive instructions or code including any unauthorized instructions or code, programmatic or otherwise that propagate through any computer or computer systems, networks, or groups of whatever nature. Computer Virus includes, but is not limited to, "Trojan Horses", "worms" and "time or logic bombs".

- Exclusion E. shall be amended to read as follows:

E. Notwithstanding any provision to the contrary within this reinsurance or any endorsements thereto it is agreed that this reinsurance excludes loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any of the following regardless of any other cause or event contributing concurrently or in any other sequence to the loss:

1. war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power; or
2. any Act of Terrorism.

For the purpose of this clause an Act of Terrorism means an act, including but not limited to the use of force or violence and/or the threat thereof, of any person or group(s) or persons, whether acting alone or on behalf of or in connection with any organization(s) or government(s), committed for political, religious, ideological or similar purposes including the intention to influence any government and/or to put the public, or any section of the public, in fear.

This clause also excludes loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to (1) and/or (2) above.

If the Reinsurers allege that by reason of this exclusion, any loss, damage, cost or expense is not covered by this reinsurance the burden of proving the contrary shall be upon the Company.

In the event any portion of this clause is found to be invalid or unenforceable, the remainder shall remain in full force and effect.

- The following exclusion is hereby added:

F. It is agreed that this reinsurance excludes loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with the actual or threatened malicious use of pathogenic or poisonous biological

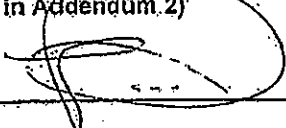


ADDENDUM No. B (Continued)

or chemical materials regardless of any other cause or event contributing concurrently or in any other sequence thereto.

LLOYD'S SYNDICATE SJC/2003 (signing  
on behalf of all other participating underwriters  
as detailed in Addendum 2)

MINNETONKA INSURANCE COMPANY



Shawn Donovan

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

Date: Sept. 2, 2008

ADDENDUM No. C Attached to and forming part of REINSURANCE AGREEMENT HJJ082

As respects Minnetonka Insurance Company's Policy No. CGL0045 (the policy under which this reinsurance has been accepted), Section III. EXTENSIONS OF COVERAGE, Item 12. INTEREST ON LOSSES is hereby amended to read as follows:

**12. INTEREST ON LOSSES**

In the event of a covered loss hereon, Reinsurers will offer reimbursement for actual and demonstrable loss of interest incurred by the Insured, for a period up to and including the date that a valid notarized partial or final proof of loss form was submitted and received by Reinsurers, such amounts claimed must be substantiated by the appointed Adjuster.

Any amounts deemed payable under this clause shall be strictly in addition to and separate from any indemnification payable on the subject net adjusted claim.

No benefit will insure to any third party, including Mortgagees, Loss Payees or any Assignee to the claims proceeds.

The basis of the settlement is:

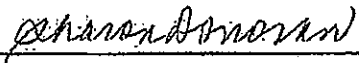
**Physical Damage:** In respect of funds expended solely in the repair/replacement of covered insured property. Actual interest foregone for the periods(s) between the release of funds by the Insured and the date of receipt by the Reinsurers of the relevant notarized Proof(s) of Loss.

**Business Interruption:** Loss of interest, on a daily pro rata basis, based upon loss of revenue by the Insured incurred solely as a result of physical loss or damage by a peril insured under the Policy and for which coverage has been confirmed by Reinsurers. Under no circumstances will interest outside the Period of Indemnity be considered.

LLOYD'S SYNDICATE SJC/2003 (signing on behalf of all other participating underwriters as detailed in Addendum 2)

MINNETONKA INSURANCE COMPANY

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

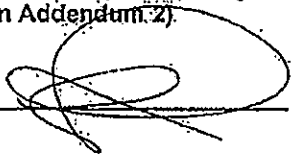
  
Date: Sept. 2, 2008

ADDENDUM No. D Attached to and forming part of REINSURANCE AGREEMENT HJJ082

As respects Minnetonka Insurance Company's Policy No. CGL0045 (the policy under which this reinsurance has been accepted), ENDORSEMENT #9 - CERTIFIED TERRORISM ENDORSEMENT TERRORISM RISK INSURANCE PROGRAM REAUTHORIZATION ACT OF 2007 is hereby deleted.

LLOYD'S SYNDICATE, SJC/2003 (signing on behalf of all other participating underwriters as detailed in Addendum 2)

MINNETONKA INSURANCE COMPANY



Sharon Donovan

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

Date: Sept. 9, 2008

ADDENDUM No. E Attached to and forming part of REINSURANCE AGREEMENT HJJ082

As respects REINSURANCE AGREEMENT HJJ082, the CLAIMS COOPERATION clause of the Reinsurance Agreement is deleted and replaced by the following CLAIMS CONTROL clause. In the event there is any other reference to Claims Cooperation in the Reinsurance Agreement, it shall be amended to read Claims Control.

CLAIMS CONTROL


Notwithstanding anything to the contrary contained in this Reinsurance Agreement, it is a condition precedent to REINSURER'S liability under this reinsurance that:

- A. The COMPANY shall give to the REINSURER written notice as soon as reasonably practicable of any claim made against the COMPANY in respect of the business reinsured hereby or of its being notified of any circumstances which could give rise to such a claim.
- B. The COMPANY shall furnish the REINSURER with all information know to the COMPANY in respect of claims or possible claims notified in accordance with (A) above and shall thereafter keep the REINSURER fully informed as regards all developments relating thereto as soon as reasonably practicable.
- C. The REINSURER shall have the right at any time to appoint adjusters and/or representatives to act on their behalf to control all investigations, adjustments and settlements in connection with any claim notified to the REINSURER as aforesaid.
- D. The COMPANY shall cooperate with the REINSURER and any other person or persons designated by the REINSURER in the investigation, adjustment and settlement of such claim.
- E. No settlement and/or compromise shall be made and no liability admitted by the COMPANY without prior agreement of the REINSURER.

LLOYD'S SYNDICATE SJC/2003 (signing  
on behalf of all other participating underwriters  
as detailed in Addendum 2)

MINNETONKA INSURANCE COMPANY

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

  
\_\_\_\_\_  
Date: Sept. 2, 2008

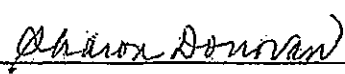
ADDENDUM No. F Attached to and forming part of REINSURANCE AGREEMENT HJJ082

As respects REINSURANCE AGREEMENT HJJ082, it is hereby agreed that the LOSS RESERVES clause does not apply to participating Lloyd's Underwriters.

LLOYD'S SYNDICATE SJC/2003 (signing  
on behalf of all other participating underwriters  
as detailed in Addendum 2)

MINNETONKA INSURANCE COMPANY

  
\_\_\_\_\_

  
\_\_\_\_\_

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

Date: Sept. 2, 2008

**EXHIBIT 4**

**REINSURANCE AGREEMENT HJJ082**

between

**MINNETONKA INSURANCE COMPANY** (hereafter called the **COMPANY**)

and

**INFRASSURE LIMITED** (hereafter called the **REINSURER**)

**WHEREAS**, the **COMPANY** may from time to time insure or accept reinsurance from companies insuring Cargill, Incorporated, and/or its subsidiaries or affiliated companies, joint ventures, and others for whom these corporations may have the right or obligation to insure (hereafter called the **INSURED**). Such insurance or reinsurance covers Property Damage and Time Element risks situated anywhere in the world (such insurance or reinsurance hereinafter called the **POLICIES**); and

**WHEREAS**, the **REINSURER** is in the business and desirous of reinsuring Property Damage, Time Element, and other coverages as may be from time to time agreed upon between the **COMPANY** and the **REINSURER**; and

**WHEREAS**, the **COMPANY** is desirous of reinsuring its liability on an excess of loss basis under the **POLICIES**; and

**NOW THEREFORE**, the **COMPANY** and the **REINSURER** do hereby mutually agree upon the following:

**COVERAGE**

This reinsurance shall be subject to the same terms and conditions as the **COMPANY**'s Policy No. CGL0045 and any insurance or reinsurance accepted by the **COMPANY** relative to this reinsurance placement.

**ATTACHMENT**

**REINSURER** attachment (**REINSURANCE ACCEPTED**) is on a ground up occurrence basis as if there are no deductibles on the **POLICIES** except where limits are on an aggregate basis. Erosion of those limits which are on an aggregate basis move the **REINSURER**'s attachment downward.

**FOLLOW THE FORTUNES**

In all things coming within the scope of this agreement, the **REINSURER** shall share to the extent of its interest the fortunes of the **COMPANY** and shall be liable for its proportion of any loss, expense and technical reserves for which the **COMPANY** may directly or indirectly become responsible.

REINSURANCE AGREEMENT HJJ082

All loss settlements made by the **COMPANY**, whether under the strict policy conditions or by way of compromise, shall be binding upon the **REINSURER** in proportion to its participation.

Notwithstanding the above, no ex-gratia payment by the **COMPANY** shall be binding upon the **REINSURER** unless agreed in writing in advance by the **REINSURER**.

This entire **FOLLOW THE FORTUNES** clause is subordinate to the **CLAIMS COOPERATION** clause contained in this agreement.

**CLAIMS COOPERATION**

The **COMPANY** shall have the responsibility to investigate, defend, negotiate settlements and arbitrate, as necessary, all claims and lawsuits related to **POLICIES** insured or reinsured by the **COMPANY** and reinsured under this Agreement. All information developed during the adjustment process will be reported simultaneously to the **COMPANY** and the **REINSURER**. **REINSURER** or its authorized representative(s) shall have the right, at its own expense, to independently associate with the **COMPANY** in the defense of any claim, suit, adjustment, or other proceeding involving or which may involve the reinsurance provided under this Agreement, and the **COMPANY** and the **REINSURER** shall cooperate in every respect in the defense of any such claim, suit, adjustment, or proceeding.

The **COMPANY**, upon knowledge of any circumstances which may give rise to a claim under this **REINSURANCE ACCEPTED**, shall advise the **REINSURER** as soon as practical of such potential claim.

**DESIGNATED CLAIMS MANAGEMENT FIRM**

It is agreed that IRMG Global Claims Services will represent the **COMPANY** on all matters relative to selection of adjusters, assessors, surveyors, engineers, accountants, or other experts in connection with claims investigation, management, and settlement all of which is conditional on the terms of the **CLAIMS COOPERATION** clause.

IRMG Global Claims Services  
A Division of Aon International Risk Management Group

Jerry R. Simmons	Phone: (440)746-8964
Senior Vice President	Fax: (440)740-0172
Manager of Property Claims	Email: jerry.simmons@irmg.com
Grand Bay II - Suite 102	
6900 South Edgerton Road	
Cleveland, Ohio 44141	

**CLAIM AND LOSS ADJUSTMENT EXPENSES**

All fees, expenses, costs and all other disbursements incurred by adjusters, assessors, surveyors or other experts on behalf of the **COMPANY** in this connection shall be made part of the claim.

REINSURANCE AGREEMENT HJJ082

**CLAIM AND LOSS ADJUSTMENT EXPENSE PAYMENTS**

Payments are due within thirty days from the date in which the REINSURER receives a request for payment.

All payments should be made directly to the COMPANY, preferably by wire transfer, to:

Bank: JP Morgan Chase Bank  
Acct: 50-23432  
Address: New York  
ABA: 021000021  
Ref: Minnetonka Insurance Company/MS 12  
Reference: (Specify Claim & Reinsurance Co. Name)

Advice must be given to Ann Kloempken at the COMPANY's office before 1:00PM CST on the day of funds transfer.

Ann Kloempken  
Phone: (952)742-7303  
Fax: (952)742-7990  
Email: Ann\_Kloempken@cargill.com

**SUBROGATION**

Subrogation shall be per Minnetonka Insurance Company Policy No. CGL0045, Section IV, **GENERAL CONDITIONS**, Item 6. **SUBROGATION AND SUBROGATION WAIVER**, with respect to the COMPANY and the INSURED; however, it is agreed that reinsurers will participate in subrogation on a top down basis if multiple reinsured layers are involved in the claim, unless there is mutual agreement among the reinsurers to share on an alternative basis.

**CANCELLATION / TERMINATION**

This agreement may be canceled at any time by mutual consent or, on demand without mutual consent, by either the COMPANY or the REINSURER giving ninety days notice of termination in writing to the other party.

Unless the COMPANY agrees to the contrary, the REINSURER shall upon termination of this agreement continue to be liable for its proper share of the risks ceded and/or losses incurred prior to the date of termination.

**LOSS RESERVES**

It is agreed that the REINSURER will provide collateral, at the request of the COMPANY, equal to the REINSURER's portion of any outstanding loss reserves which must be collateralized by the COMPANY to satisfy competent regulatory authorities on business subject to this Agreement.

REINSURANCE AGREEMENT HJJ082

**ERRORS AND OMISSIONS**

Errors of involuntary or inadvertent omission shall not in any way invalidate the liability of the REINSURER under this agreement which would have attached had no errors or omissions occurred. Such errors or omissions shall be corrected immediately upon discovery.

**PREMIUM ADJUSTMENT**

It is agreed that the premium for this REINSURANCE ACCEPTED shall be subject to adjustment for an acquisition or divestiture by the INSURED if such acquisition or divestiture (in a single transaction) has insured values of more than 5% of the INSURED's total insured values relative to this reinsurance placement. Such premium adjustment shall be computed on a pro rata basis from the date of acquisition or disposition to the end of the current premium period.

**ACCESS TO RECORDS**

The REINSURER or its duly authorized representatives shall have the right to examine, at the offices of the COMPANY and at a reasonable time, all books and records of the COMPANY relating to business which is the subject of this Agreement.

**ARBITRATION**

Any controversy or claim arising out of or relating to this Agreement between the COMPANY and the REINSURER, which cannot be resolved in the normal course of business, shall be submitted to and determined by binding arbitration.

One arbitrator shall be chosen by the COMPANY and one by the REINSURER, and the two arbitrators shall jointly select an umpire. Each party must appoint its arbitrator within thirty days of a written demand for arbitration. If the two arbitrators cannot mutually agree on the selection of an umpire within thirty days after selection of the arbitrators, either party may request that the American Arbitration Association appoint the umpire.

Each party shall submit its case to the umpire within thirty days after selection of the umpire unless the period is extended by mutual consent of the arbitrators. The arbitration shall be decided in accordance with the terms of this Agreement and shall take into account usage of the reinsurance business.

The COMPANY and the REINSURER shall each bear all its own expenses of arbitration and the costs of its selected arbitrator and others it may hire to help and advise in the process. The cost of the umpire shall be borne equally by the COMPANY and the REINSURER unless the arbitrators and the umpire decide otherwise. Arbitration shall take place in Minneapolis, Minnesota or at a location otherwise agreed upon by both parties. The language of the arbitration shall be English. The duty to arbitrate shall survive the cancellation or termination of this agreement.

REINSURANCE AGREEMENT HJJ082

#### INSOLVENCY

In the event of the insolvency of the **COMPANY**, the liquidator or receiver or statutory successor of the insolvent **COMPANY** shall give written notice to the **REINSURER** of a claim against the **COMPANY** on **POLICIES** reinsured within a reasonable time after such claim. The **REINSURER** may investigate such claim and interpose, at its expense, in the proceeding where such claim is to be adjudicated any defense or defenses which may be deemed available to the **COMPANY** or its liquidator or receiver or statutory successor. The expense thus incurred by the **REINSURER** shall be chargeable, subject to court approval, against the **COMPANY** as part of the expense of liquidations, to the extent of the proportionate share of the benefit which may accrue to the **COMPANY** as a result of the defense undertaken by the **REINSURER**.

Further, the **REINSURER** shall be entitled in such circumstances to remit its due proportion of claims payable directly to the original **INSURED** of the **COMPANY**. It is understood that the **REINSURER** shall obtain a discharge jointly in the name of the **COMPANY** and the **REINSURER** to the extent of the amount paid and such payment shall discharge the liability of the **REINSURER** to the **COMPANY**.

If the **REINSURER** is at any time placed in the hands of a receiver, assignee or trustee for the purposes of liquidation on account of insolvency, the **REINSURER** shall give notice to the **COMPANY** of the said happening. In such event, the **REINSURER** assigns to the **COMPANY** all benefit and interest in or under its retrocession treaties so far as they relate to liabilities assumed by the **REINSURER** under this Agreement together with the right so far as may be necessary, to demand performance or sue for and enforce the same in the name of the **REINSURER** to hold the same unto the **COMPANY** absolutely.

Following the insolvency of either the **COMPANY** or the **REINSURER** each party shall be entitled to deduct from the other any amounts which may be or may become due to the other party under this Agreement.

#### PARAMOUNT CLAUSE

It is understood and agreed that the conditions contained in this **REINSURANCE AGREEMENT** shall override anything that may be at variance or contradictory to any reinsurance binders, cover notes, or contracts issued by the **REINSURER**.

#### AMENDMENTS

This Agreement may be amended by mutual consent of the parties expressed by addendum; and such addendum, when executed by both parties, shall be deemed to be an integral part of this Agreement and binding on the parties hereto.

REINSURANCE AGREEMENT HJJ082

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives:

In BURIEH, this 01 day of SEPTEMBER, 2008.

WITNESS:

INFRASSURE LIMITED

[Signature]



\_\_\_\_\_

In Minnetonka, Minnesota, this 2nd day of September, 2008.

WITNESS:

MINNETONKA INSURANCE COMPANY

Sandra Kenney

Sharon Donovan

**REINSURANCE DECLARATIONS**

**ADDENDUM No. 1 Attached to and forming part of REINSURANCE AGREEMENT HJJ082**

<b>COMPANY:</b> Minnetonka Insurance Company
<b>REINSURER:</b> Infrassure Limited
<b>INSURED:</b> Cargill, Incorporated, et al
<b>TERM</b> From: March 1, 2008 at 12:01am Standard Time at the insured location To: March 1, 2009 at 12:01am Standard Time at the insured location
<b>REINSURANCE ACCEPTED:</b>  10% part of \$100 million excess of \$75 million
<b>GROSS PREMIUM:</b> \$262,000
<b>COMMISSION:</b> Nil
<b>NET REINSURANCE PREMIUM:</b> \$262,000

**INFRASSURE LIMITED**

*MP*  


Date: 01/09/2008

**MINNETONKA INSURANCE COMPANY**

*Pharox Donovan*

Date: Sept. 2, 2008

ADDENDUM No. A Attached to and forming part of REINSURANCE AGREEMENT HJJ082

As respects Minnetonka Insurance Company's Policy No. CGL0045 (the policy under which this reinsurance has been accepted), Section II: SPECIAL CONDITIONS, Item 3. LIMIT OF LIABILITY, is hereby amended to read as follows:

3. LIMIT OF LIABILITY

The limit of liability per loss occurrence is \$995 million for all locations except:

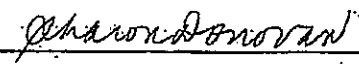
- A. Extra Expense for all locations - \$75 million.
- B. Contingent Business Interruption for all locations - \$75 million. See note under Item 3.C. Contingent Extra Expense, in regard to flood coverage.
- C. Contingent Extra Expense for all locations - \$75 million. The combined Contingent Business Interruption and Contingent Extra Expense limit is \$75 million per occurrence and \$75 million annual aggregate for the peril of flood that causes delay or interruption of river barge transportation.
- D. Off Premises Power and Communications - \$75 million.
- E. Tenants' and Neighbors' Liability - \$50 million.
- F. \$300 million per occurrence and in the annual aggregate as respects the peril of flood, except: \$100 million per occurrence and in the annual aggregate for flood in Netherlands.
- G. \$300 million per occurrence and in the annual aggregate as respects the peril of earthquake, except: \$100 million per occurrence and in the annual aggregate for California and \$100 million per occurrence and in the annual aggregate for Japan.
- H. Decontamination and Cost of Clean Up Expense - \$40 million.
- I. Malicious and Accidental Damage - \$55 million.
- J. Civil and Military Authorities and Ingress/Egress separately - 90 days.

The sublimits noted above in A. through J. are inclusive of the Deductible/Reimbursement amount and are inclusive of, not in addition to, the overall limit of liability per loss occurrence as stated above.

INFRASSURE LIMITED  
  
 energy and construction insurance

Date: 07/09/08

MINNETONKA INSURANCE COMPANY

  
 Date: Sept. 2, 2008

**ADDENDUM No. B Attached to and forming part of REINSURANCE AGREEMENT HJJ082**

As respects Minnetonka Insurance Company's Policy No. CGL0045 (the policy under which this reinsurance has been accepted), Section II. SPECIAL CONDITIONS, Item 8. PERILS EXCLUDED, the following amendments shall apply:

- Exclusion A. 5. is for the purposes of this Reinsurance, amended to read as follows and ceases to read as previously written:

A. 5. dampness of atmosphere, evaporation, wet or dry rot, mold, mildew, fungus, spores or other microorganism of any type, nature, or description, including but not limited to any substance whose presence poses an actual or potential threat to human health;

**MICROORGANISM EXCLUSION – Absolute**

This Policy does not insure any loss, damage, claim, cost, expense or other sum directly or indirectly arising out of or relating to:

mold, mildew, fungus, spores or other microorganism of any type, nature, or description, including but not limited to any substance whose presence poses an actual or potential threat to human health;

This exclusion applies to buildings only regardless whether there is (i) any physical loss or damage to insured property; (ii) any insured peril or cause, whether or not contributing concurrently or in any sequence; (iii) any loss of use, occupancy, or functionality; or (iv) any action required, including but not limited to repair, replacement, removal, cleanup, abatement, disposal, relocation, or steps taken to address medical or legal concerns.

This exclusion replaces and supersedes any provision in the Policy that provides insurance, in whole or in part, for these matters.

Notwithstanding the above, this exclusion shall apply to buildings only and shall not apply to contents contained therein.

- As respects exclusion A.13., product recall is specifically excluded from coverage herein, regardless if such loss or damage is a result of a peril not otherwise excluded by this Policy, or a peril not otherwise excluded ensues.
- Exclusion C. shall be amended to read as follows:
  - C. This policy does not insure any loss of, damage to, destruction, distortion, interruption, erasure, corruption or alteration of Electronic Data caused by Computer Virus, nor any resulting time element loss.
    - 1. Electronic Data means facts, concepts, code or any other information converted to a form useable for communication, interpretation or processing by computers or other electronic or electromechanical data processing or electronically controlled equipment and includes programs, software and other

ADDENDUM No. B (Continued)

code instructions for the processing or manipulation of other data or the direction and manipulation of any equipment.

2. Computer Virus means any corrupting harmful or otherwise disruptive instructions or code including any unauthorized instructions or code, programmatic or otherwise that propagate through any computer or computer systems, networks, or groups of whatever nature. Computer Virus includes, but is not limited to, "Trojan Horses", "worms" and "time or logic bombs".

- Exclusion E. shall be amended to read as follows:

E. Notwithstanding any provision to the contrary within this reinsurance or any endorsements thereto it is agreed that this reinsurance excludes loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any of the following regardless of any other cause or event contributing concurrently or in any other sequence to the loss:

1. war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power; or
2. any Act of Terrorism.

For the purpose of this clause an Act of Terrorism means an act, including but not limited to the use of force or violence and/or the threat thereof, of any person or group(s) or persons, whether acting alone or on behalf of or in connection with any organization(s) or government(s), committed for political, religious, ideological or similar purposes including the intention to influence any government and/or to put the public, or any section of the public, in fear.

This clause also excludes loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to (1) and/or (2) above.

If the Reinsurers allege that by reason of this exclusion, any loss, damage, cost or expense is not covered by this reinsurance the burden of proving the contrary shall be upon the Company.

In the event any portion of this clause is found to be invalid or unenforceable, the remainder shall remain in full force and effect.

- The following exclusion is hereby added:

F. It is agreed that this reinsurance excludes loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with the actual or threatened malicious use of pathogenic or poisonous biological


ADDENDUM No. B (Continued)

or chemical materials regardless of any other cause or event contributing concurrently or in any other sequence thereto.

INFRASSURE LIMITED  
  
Energy and Infrastructure Insurance

Date: 01/09/08

MINNETONKA INSURANCE COMPANY



Date: Sept. 2, 2008

ADDENDUM No. C Attached to and forming part of REINSURANCE AGREEMENT HJJ082

As respects Minnetonka Insurance Company's Policy No. CGL0045 (the policy under which this reinsurance has been accepted); Section III. EXTENSIONS OF COVERAGE, Item 12, INTEREST ON LOSSES is hereby amended to read as follows:

**12. INTEREST ON LOSSES**

In the event of a covered loss hereon, Reinsurers will offer reimbursement for actual and demonstrable loss of interest incurred by the Insured, for a period up to and including the date that a valid notarized partial or final proof of loss form was submitted and received by Reinsurers, such amounts claimed must be substantiated by the appointed Adjuster.

Any amounts deemed payable under this clause shall be strictly in addition to and separate from any indemnification payable on the subject net adjusted claim.

No benefit will insure to any third party, including Mortgagees, Loss Payees or any Assignee to the claims proceeds.

The basis of the settlement is:

**Physical Damage:** In respect of funds expended solely in the repair/replacement of covered insured property; Actual interest foregone for the period(s) between the release of funds by the Insured and the date of receipt by the Reinsurers of the relevant notarized Proof(s) of Loss.

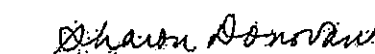
**Business Interruption:** Loss of interest, on a daily pro rata basis, based upon loss of revenue by the Insured incurred solely as a result of physical loss or damage by a peril insured under the Policy and for which coverage has been confirmed by Reinsurers. Under no circumstances will interest outside the Period of Indemnity be considered.

INFRASSURE LIMITED

 **Infrassure**  
Energy and Infrastructure Insurance

Date: 04/09/08

MINNETONKA INSURANCE COMPANY



Date: Sept. 2, 2008

ADDENDUM No. D Attached to and forming part of REINSURANCE AGREEMENT HJJ082

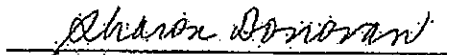
As respects Minnetonka Insurance Company's Policy No. CGL0045 (the policy under which this reinsurance has been accepted), ENDORSEMENT #9 - CERTIFIED TERRORISM ENDORSEMENT TERRORISM RISK INSURANCE PROGRAM REAUTHORIZATION ACT OF 2007 is hereby deleted.

INFASSURE LIMITED

  
**infassure**  
Energy and Infrastructure Insurance

Date: 01/09/08

MINNETONKA INSURANCE COMPANY



Date: Sept. 2, 2008

ADDENDUM No. E Attached to and forming part of REINSURANCE AGREEMENT HJJ082

As respects REINSURANCE AGREEMENT HJJ082, the CLAIMS COOPERATION clause of the Reinsurance Agreement is deleted and replaced by the following CLAIMS CONTROL clause. In the event there is any other reference to Claims Cooperation in the Reinsurance Agreement, it shall be amended to read Claims Control.

CLAIMS CONTROL

Notwithstanding anything to the contrary contained in this Reinsurance Agreement, it is a condition precedent to REINSURER'S liability under this reinsurance that:


- A. The COMPANY shall give to the REINSURER written notice as soon as reasonably practicable of any claim made against the COMPANY in respect of the business reinsured hereby or of its being notified of any circumstances which could give rise to such a claim.
- B. The COMPANY shall furnish the REINSURER with all information known to the COMPANY in respect of claims or possible claims notified in accordance with (A) above and shall thereafter keep the REINSURER fully informed as regards all developments relating thereto as soon as reasonably practicable.
- C. The REINSURER shall have the right at any time to appoint adjusters and/or representatives to act on their behalf to control all investigations, adjustments and settlements in connection with any claim notified to the REINSURER as aforesaid.
- D. The COMPANY shall cooperate with the REINSURER and any other person or persons designated by the REINSURER in the investigation, adjustment and settlement of such claim.
- E. No settlement and/or compromise shall be made and no liability admitted by the COMPANY without prior agreement of the REINSURER.

INFRASSURE LIMITED

 **infassure**  
energy and infrastructure insurance

Date: 01/09/08

MINNETONKA INSURANCE COMPANY



Date: Sept. 2, 2008

# **EXHIBIT 5**

**WOLLMUTH MAHER & DEUTSCH LLP**

500 FIFTH AVENUE

NEW YORK, NEW YORK 10110

TELEPHONE (212) 382-3300

FACSIMILE (212) 382-0050

October 28, 2009

**BY FEDERAL EXPRESS AND E-MAIL**

Mr. Arjang Victory  
Bruckmann & Victory, LLP  
420 Lexington Avenue  
New York, New York 10170

Re: Arbitration Between Minnetonka Insurance Company  
("Minnetonka") and SCOR UK Company Limited,  
Infrassure Limited, and Certain Underwriters at Lloyd's, London

Dear Mr. Victory:

This firm represents Minnetonka in connection with the above-referenced matter. In accordance with the Arbitration Clauses in Reinsurance Agreements each bearing numbers HJJ082 (collectively, the "Reinsurance Agreements"), Minnetonka demands arbitration against Lloyd's Syndicate SJC-2003 signing on behalf of all other participating underwriters as detailed in Addendum 2, Infrassure Limited, and SCOR UK Company Limited (the "Reinsurers") in connection with Claims Control Addendum No. E as it applies to certain losses sustained by Minnetonka's insured, Cargill Inc. (the "Cargill Losses").

A dispute exists between Minnetonka and the Reinsurers. More specifically, the Reinsurers assert that they need not state whether they agree or disagree with settlements, compromises or admissions of liability Minnetonka intends to make in connection with the Cargill Losses, but instead may reserve their rights. Minnetonka disagrees with the Reinsurers' position.


Based upon the Reinsurers' position regarding claims control, Minnetonka demands the following relief: (i) a declaration that the Reinsurers must either agree or disagree with Minnetonka's proposed settlements, compromises or admissions of liability in connection with the measurement and adjustment of the Cargill Losses or be deemed to have waived their rights under Addendum No. E of the Reinsurance Agreements; (ii) an award that the Reinsurers are responsible for the umpire fees, attorney's fees and costs in connection with the arbitration;

and (iii) other relief deemed appropriate by the Panel. Minnetonka reserves its right to modify and/or supplement its demand for arbitration as well as its requests for relief.

In accordance with the Arbitration Clauses in the Reinsurance Agreements, Minnetonka requests that the Reinsurers appoint an arbitrator within thirty days of receipt of this notice. In the event that the Reinsurers fail to appoint an arbitrator within such 30-day time period, Minnetonka will appoint a second arbitrator.

Although Minnetonka has commenced arbitration, we remain hopeful that the Reinsurers will consider reevaluating their position so that we may explore resolution of this issue without the cost and delay of a formal arbitration. In the event we must go forward, Minnetonka will request an expedited hearing and award from the Panel. We stand ready to meet with the Reinsurers and/or their counsel in good faith to the extent they wish to resolve this dispute on a consensual basis.

Very truly yours,



William A. Maher

cc: Harold J. Sofield