



U.S. Department of Justice

Criminal Division

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*Fraud Section*

*Bond Building  
1400 New York Ave., N.W.  
Washington, D.C. 20530*

Ronald L. Olson, Esq.  
Munger, Tolles & Olson LLP  
355 South Grand Avenue, 35th Floor  
Los Angeles, CA 90071-1560

**Re: General Reinsurance**

Dear Mr. Olson:

This letter sets forth the Non-Prosecution Agreement ("Agreement") between the United States Department of Justice, Fraud Section, Criminal Division ("the Department") and General Re Corporation ("General Re"), a Connecticut-based corporation and subsidiary of Berkshire Hathaway, Inc., a company incorporated in Delaware with its principal place of business in Omaha, Nebraska. General Re Corporation owns General Reinsurance Corporation ("Gen Re"), which owns Kolnische Ruckversicherungs-Gesellschaft AF ("Cologne Re"), which, in turn, has a subsidiary in Dublin, Ireland, known as Cologne Re Dublin ("CRD"). General Re, by its undersigned attorney, pursuant to the authority granted by General Re's Board of Directors, enters into this Agreement with the Department, which shall apply to General Re, Gen Re, Cologne Re, and CRD. As used in this Agreement, "General Re" shall be read to include Gen Re, Cologne Re, and CRD, unless otherwise stated.

The Department has notified General Re that, based upon an investigation by the Department and the United States Postal Inspection Service, in its view, General Re, acting through its officers and employees, has violated federal criminal law through its participation in a transaction with American International Group, Inc. ("AIG"), which was designed to and did misstate AIG's general insurance underwriting loss reserves from Q4 2000 through Q3 2004. This transaction is known as the AIG/Gen Re Loss Portfolio Transfer (the "LPT").

In exchange for a non-prosecution agreement, the parties have agreed to the following terms and conditions:

**Non-Prosecution for Criminal Liability**

1. The Department agrees not to prosecute General Re for any crimes committed by General Re relating to the LPT, including, but not limited to, conspiracy, 18 U.S.C. §371; securities fraud, 15 U.S.C. §§78j(b) and 78ff; false statements to the SEC, 15 U.S.C. §§78m(a) and 78ff; mail fraud, 18 U.S.C. §1341; and wire fraud, 18 U.S.C. §1343. This Paragraph does not provide any protection against prosecution for illegal activities, if any, committed in the future by General Re or its subsidiaries, nor does it apply to any illegal conduct that may have occurred in the past which is not described in the Agreed Statement of Facts attached hereto as

“Attachment A.” In addition, this Paragraph does not provide any protection against criminal prosecution of any present or former director, officer, employee, agent or consultant of General Re or its subsidiaries for any violations committed by them.

### **Breach of Agreement**

2. If the Department determines, in its sole discretion, that General Re or any of its employees, officers or directors have failed to comply with or knowingly violated any provision of this Agreement; have provided deliberately false, incomplete, or misleading information under this Agreement; or have violated any provision of the federal securities laws during the term of this Agreement, General Re will be deemed to be in breach of this Agreement, and General Re shall, thereafter, be subject to prosecution for crimes committed by and through its employees related to the LPT.

3. The Department shall provide written notice to General Re of the alleged breach, and General Re shall then have fifteen (15) days from the date of receipt of such notice in which to make a presentation to the Department to demonstrate that no such breach has occurred; to the extent relevant, that such breach was cured; or, that the Department should neither revoke the Agreement nor prosecute Gen Re.

4. General Re further understands and agrees the Department’s exercise of discretion under the preceding paragraphs is not subject to review in any court or tribunal outside the Department of Justice, and that any prosecution following such a determination may be premised on any information provided by General Re and its employees, officers and directors to the Department and any leads derived therefrom. General Re agrees that, in any such proceeding, it will not seek to suppress the use of any such information, or any leads derived therefrom, under the United States Constitution, Federal Rule of Evidence 410, or any other rule; that it will not contradict in any such proceeding the Agreed Statement of Facts in Attachment A; and that it will stipulate to the admissibility of the Agreed Statement of Facts in Attachment A and all exhibits admitted into evidence at the criminal trial in the matter entitled *United States v. Ferguson, et al.* General Re further agrees that it shall not contest the authenticity of other documents, recorded conversations, and materials provided to the Department by Berkshire Hathaway, General Re and/or General Re’s subsidiaries in the course of the Department’s investigation, but General Re otherwise may challenge the admissibility of any such materials in any prosecution of General Re.

### **Tolling of the Statute of Limitations**

5. General Re agrees to toll the running of the statute of limitations for the term of this Agreement on the crimes specified in paragraph one above committed by General Re, acting through its officers and employees, relating to the LPT.

### **Acceptance of Responsibility**

6. General Re accepts and acknowledges responsibility for the acts of its former officers and employees, as set forth in the Agreed Statement of Facts in Attachment A. General Re further agrees that the factual statements set forth in the Agreed Statement of Facts are accurate. General Re condemns and does not condone criminal conduct, including the improper

conduct set forth in the Agreed Statement of Facts, and has taken steps to prevent such conduct from occurring in the future, including the corporate remediation measures set forth in paragraph fourteen below.

7. General Re agrees that neither it nor its directors and executive officers, nor any person authorized to speak for them, will make, cause others to make, or acknowledge as true any factual statement inconsistent with the factual descriptions of the Agreed Statement of Facts in Attachment A. Any such public statement inconsistent with the Agreed Statement of Facts shall, subject to the cure rights below, constitute a breach of this Agreement. The decision whether any public statement by any such person contradicted the Agreed Statement of Facts and whether it shall be imputed to General Re for the purpose of determining whether General Re has breached this Agreement shall be in the sole discretion of the Department. If the Department determines that a public statement by any such person contradicts in whole or in part a statement contained in the Agreed Statement of Facts, the Department shall so notify General Re and General Re may avoid a breach of this Agreement by publicly repudiating such statements(s) within five (5) business days after notification. This paragraph is not intended to apply to any statement made by any former General Re officers, directors or employees. Further, nothing in this paragraph precludes General Re from taking good faith positions in litigation involving a private party that are not inconsistent with the Agreed Statement of Facts in Attachment A.

#### Cooperation

8. During the term of this Agreement, General Re agrees to continue to cooperate fully with the Department and the United States Securities Exchange Commission (the "SEC") in any ongoing investigations of individuals who may have been involved in the LPT. General Re agrees that its cooperation shall include, but is not limited to, the following with respect to the LPT:

- a. timely disclosure of truthful, complete and accurate information with respect to the activities of General Re and its directors, officers, employees, agents or consultants, concerning all matters relating to the ongoing investigations of the LPT;
- b. timely provision to the Department and the SEC of all documents and other materials, including documents and materials located outside the United States, that the Department or the SEC may request; and
- c. its best efforts to make available in a timely and voluntary manner to the Department and/or the SEC all present officers, directors and employees for sworn testimony before a federal grand jury or in a federal trial and interviews with federal law enforcement authorities. Cooperation under this paragraph will include identification of witnesses not previously identified who, to the knowledge of General Re, may have material information regarding the matters under investigation.

9. General Re's obligation to cooperate pursuant to the preceding paragraph is not intended to apply if a prosecution by the Department is commenced against General Re as a result of a breach of this Agreement.

10. Nothing in this Agreement shall be construed as a waiver of any attorney-client or work product privilege.

11. With respect to any information, testimony, document, record, or other tangible evidence provided to the Department pursuant to this Agreement, General Re consents to any and all disclosures to other government agencies, whether agencies of the United States or a foreign government, of such materials as the Department, in its sole discretion, shall deem appropriate.

### **AIG Shareholder Restitution**

12. General Re has acknowledged to the Department its obligation to contribute to the loss incurred by AIG's shareholders as a consequence of the LPT transaction. As set forth in the Agreed Statement of Facts in Attachment A, the United States District Court that presided over the related criminal trial of Gen Re's former executives determined that AIG's shareholder loss as a consequence of the LPT transaction, for sentencing purposes, was approximately \$544 million to \$597 million. The Department recognizes that General Re, AIG and other third-parties have paid or have agreed to pay restitution to AIG's victim shareholders, exclusive of attorneys' fees and expenses, through regulatory and civil settlements that will satisfy the loss amount determined by the district court in the related criminal case captioned *United States v. Ferguson, et al.* Gen Re in particular has agreed to pay \$60.5 million, exclusive of attorneys' fees and expenses, through a civil class action settlement with AIG's victim shareholders for losses to those victim shareholders from the LPT as determined by the district court in the related criminal case. Gen Re and the plaintiffs in the class action entitled *In re American International Group, Inc. Securities Litigation*, Master File No. 04 Civ. 8141, have filed a motion for approval of the class action settlement with the United States District Court and are awaiting a court hearing on the parties' request for court approval of the settlement. The parties agree that Gen Re's payment, when combined with that of AIG and other third parties, satisfies restitution with regard to the loss amount determined the district court in *United States v. Ferguson, et al.* At present, the \$60.5 million payment by Gen Re is awaiting court approval of the settlement. The Department may extend the term of this Agreement if necessary to account for the resolution of that contingency.

### **Monetary Payment**

13. General Re agrees to pay \$19,500,000 to the United States Postal Inspection Service Consumer Fraud Fund for the conduct described in the Agreed Statement of Facts. General Re shall pay this sum by certified check or bank cashier's check made payable to the United States Postal Inspection Service Consumer Fraud Fund within five (5) business days of the date of execution of this Agreement by the parties. This amount is a final payment and shall not be refunded should the Department later determine that General Re has breached this Agreement and commence a prosecution against General Re. Further, nothing in this Agreement shall be deemed an agreement by the Department that this amount is the maximum criminal fine

that may be imposed in any such prosecution and the Department shall not be precluded in such a prosecution from arguing that the Court should impose a higher fine. The Department agrees, however, that in the event of a subsequent breach and prosecution, it will recommend to the Court that the amount paid pursuant to this Agreement be offset against whatever fine the Court shall impose as part of its judgment. General Re understands that such a recommendation will not be binding on the Court. General Re acknowledges that no tax deduction may be sought in connection with this payment.

#### **Internal Corporate Remediation Measures**

14. General Re has instituted the following internal corporate remediation measures applicable to itself and its subsidiaries, as set forth below, and agrees to maintain said remediation measures at least during the term of this Agreement:

- a. General Re Corporation has named an independent director to its Board of Directors, who will also serve on the Audit Committee of the Board of Directors;
- b. General Re Corporation's Audit Committee meetings are and will be attended by the Berkshire Hathaway CFO and Director of Internal Audit. Prior to Audit Committee meetings, the Berkshire representatives are and will be provided quarterly reports prepared by the Internal Audit Group. The Berkshire representatives must also approve the Gen Re Audit Committee's internal audit plan;
- c. General Re Corporation has created a Complex Transaction Committee ("CTC"). The members of the CTC consist of senior managers, including Gen Re's Chief Executive Officer, Chief Financial Officer, and General Counsel. The CTC reviews and will review Gen Re's risk-transfer protocols for reinsurance contracts that require risk-transfer review by actuaries. The CTC will review on a quarterly basis certain reinsurance transactions to ensure that they are not designed to assist the counter-party to falsify, manipulate and/or window-dress its financial statements. The CTC will examine General Re's exposure to reputational risk from transactions that may be susceptible to misuse by the parties to facilitate financial statement manipulation. The CTC will maintain the power to reject any proposed transaction from being written by Gen Re or any of its insurance or reinsurance company affiliates within the Gen Re Group. Two members of the CTC (Gen Re's CEO and CFO) must sign an annual attestation concerning Gen Re's ceded reinsurance in which they represent (1) that there are no separate written or oral Agreements with the assuming reinsurer that would reduce, limit or mitigate the actual or potential loss under the reinsurance contract; (2) that for each reinsurance contract entered into, renewed, or amended on or after January 1, 1994, for which Gen Re is taking credit on its current financial statement and for which risk transfer is not reasonably

considered to be self-evident, documentation concerning the economic intent of the transaction and the risk transfer analysis evidences proper accounting treatment and is available for review; and (3) that Gen Re has the appropriate controls in place to monitor the use of reinsurance. No member of the CTC may overrule the majority decision of the CTC;

- d. General Re Corporation has significantly enhanced the review and reporting roles of its Internal Audit Group by implementing the following reforms: (1) appointing a Global Head of Internal Audit who is responsible for designing, implementing, managing and coordinating effective risk assessment on a global basis for all Gen Re companies and who reports to both Gen Re's CFO and Berkshire Hathaway's Internal Audit Director; (2) increasing the staffing of the Audit group; and (3) including as members of the Internal Audit Group outside audit specialists from a consulting firm.
- e. General Re Corporation has established a Risk Committee, whose members will include the CEO, the CFO, the Head of Internal Audit, and the Chief Actuary. Among other functions, the Risk Committee will be responsible for examining Gen Re's risk exposure in underwriting transactions;
- f. General Re has mandated throughout its worldwide subsidiaries that any proposed finite or loss mitigation contract be subject to legal review by in-house counsel;
- g. General Re has implemented underwriting rules that require, among other things, that all terms of a reinsurance agreement be expressed in the written agreement and maintained in the file of the agreement; that all linked transactions be disclosed; that all deposit accounted transactions underwritten by Gen Re be disclosed in its filings with relevant regulators; that deposit accounting treatment will be noted in the agreement itself; and that reinsurance contracts will be independently reviewed by persons not involved in the origination or underwriting of the transaction to confirm the contracts meet current risk transfer standards for insurance accounting, unless risk transfer is reasonably evident on the face of the transaction (such as catastrophe policies);
- h. General Re has instituted training and ethical compliance across its U.S. and worldwide subsidiaries regarding, among other things, risk-transfer protocols applicable to reinsurance contracts; and
- i. General Re has terminated, settled, or assigned to third-parties or to one of its non-United States subsidiaries CRD's contractual obligations, and will make reasonable efforts to dissolve CRD within

three years from the date of this Agreement. In the event that General Re fails to use reasonable efforts to dissolve CRD within three years from the date of this Agreement, the Department may consider that fact in determining whether General Re has complied with its obligations and representations in this Agreement. Should General Re demonstrate the existence of reasonable circumstances requiring additional time to complete the dissolution of CRD, the Department will agree to extend the time in which CRD may be dissolved, provided that the Department may require General Re to extend the term of this Agreement.

#### **Basis for Agreement**

15. The Department enters into this Agreement based upon the following facts and circumstances: (a) General Re conducted an investigation of the criminal conduct described in the Statement of Facts; (b) General Re's ongoing cooperation with the Department and the SEC since January 2005, which assisted the Department in furthering its investigation against culpable individuals; (c) General Re's investigation and disclosure of other finite reinsurance transactions of concern unrelated to the LPT; (d) General Re's willingness to accept responsibility for the conduct of its senior officers; (e) General Re has undertaken, and has agreed to undertake, remedial measures to ensure that this conduct will not recur; and (f) General Re's demonstration of future good conduct compliance with the federal securities laws and Generally Accepted Accounting Principles.

#### **Statements to the Media and Public**

16. General Re agrees that if it issues a press release or other prepared public statement in connection with this Agreement, General Re shall first consult with the Department to determine whether: (a) the text of the release is true and accurate with respect to matters between the Department and General Re; and (b) the Department has no objection to the release. Statements at any press conference concerning this matter shall be consistent with this press release. General Re shall make every reasonable effort to provide the Department with at least two (2) days notice to review the text of any proposed press release or prepared public statement.

#### **Term of Agreement**

17. This Agreement shall be in effect for a period of three years from the date of its execution, except as to the cooperation obligations in paragraph eight, which shall be in effect until the conclusion by the Department of its ongoing investigation into individuals involved in the LPT, including through the conclusion of any actual or pending proceedings in U.S. District Court against any individuals that may arise from the Department's ongoing investigation. General Re's failure to comply with any ongoing obligations in paragraph eight beyond the term of this agreement shall be deemed to constitute a breach of this Agreement.

#### **Corporate Authority**

18. General Re hereby warrants and represents that it is authorized to enter into this Agreement on behalf of itself and Gen Re, Cologne Re, and Cologne Re Dublin, and that the

person signing on behalf of General Re has been granted authority by the General Re Board of Directors to bind General Re and its subsidiaries named herein.

#### **Binding Nature of the Agreement**

19. It is understood that this Agreement is binding on General Re and the Department of Justice, but that this Agreement does not bind any other federal agencies, or any state or local enforcement or regulatory agencies. The Department will bring the cooperation of General Re and its compliance with its obligations under this Agreement, its remedial actions and proactive measures to the attention of such agencies and authorities if requested to do so by General Re.

#### **Successor Liability**

20. General Re agrees that in the event it sells, merges, or transfers all or substantially all of its business operations as they exist during the term of this Agreement, whether such sale is structured as a stock or asset sale, merger, or transfer, it shall include in any contract for sale, merger or transfer a provision binding the purchaser or any successor-in-interest thereto to the obligations described in this Agreement.

#### **Notice**

21. Any notice to General Re under this Agreement shall be given by personal delivery, overnight delivery by a recognized courier service, or registered or certified mail, addressed to the General Counsel of General Re, 120 Long Ridge Road, Stamford, Connecticut, 06902.

#### **Required Signatures, Authorization and Corporate Seal**

22. By signing this Agreement, General Re's duly authorized representative and General Re's counsel acknowledge that the terms set forth above accurately reflect the parties understanding of the Non-Prosecution Agreement between General Re and the Department. In addition to signing this Agreement, General Re is required to affix its corporate seal next to the signature of its authorized representative and to execute the requisite authorization and corporate resolutions to bind General Re to this Agreement.

23. Two original copies of this Agreement shall be executed, one of which shall be delivered to the General Counsel of General Re, and one of which shall be delivered to Adam G. Safwat, Assistant Chief of the Fraud Section.

#### **Complete Agreement**

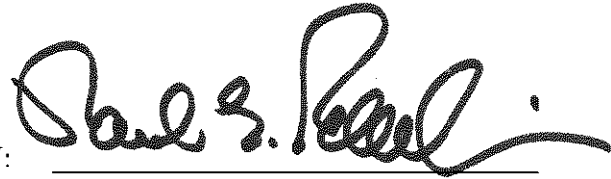
24. This Agreement sets forth the terms of the Non-Prosecution Agreement between General Re and the Department. No promises, agreements, or conditions have been entered into other than those set forth in this Agreement. This Agreement supersedes prior understandings, if any, of the parties, whether written or oral.

25. No amendments or modifications to this Agreement shall be valid unless they are in writing and signed by the Department, the attorneys for General Re, and a duly authorized representative of General Re.

**FOR THE DEPARTMENT OF JUSTICE:**

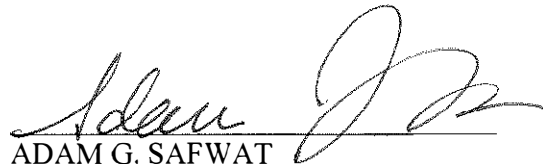
Date: January 14, 2010

BY:



PAUL E. PELLETIER  
Acting Chief, Fraud Section

BY:



ADAM G. SAFWAT  
Assistant Chief, Fraud Section  
United States Department of Justice  
Criminal Division, Fraud Section  
Bond Building  
1400 New York Ave., N.W.  
Washington, D.C. 20530  
(202) 514-0819

**AGREED:**

**FOR GENERAL RE CORPORATION:**

Date: January 18, 2010



Damon N. Vocke  
General Counsel, Senior Vice President  
and Secretary for General Re Corporation

## CERTIFICATE OF CORPORATE RESOLUTIONS

WHEREAS, GENERAL RE CORPORATION ("GENERAL RE" or the "Company") has been engaged in discussions with the United States Department of Justice in connection with issues related to a transaction entered in 2000 with AIG known as the Loss Portfolio Transfer; and

WHEREAS, in order to resolve such discussions, it is proposed that the Company enter into a non-prosecution agreement with the United States Department of Justice; and

WHEREAS the General Counsel for the Company in consultation with outside counsel has advised the Board of Directors of the Company's rights, possible defenses, the Organizational Sentencing Guidelines' provisions, and the consequences of entering into such agreement with the United States Department of Justice;

Therefore, this Board hereby RESOLVES that:

1. The Company consents to the entry of the Non-Prosecution Agreement with the United States Department of Justice;
2. Counsel for the Company, or his delegate, are hereby authorized, empowered and directed, on behalf of the Company, to execute the Non-Prosecution Agreement substantially in such form as reviewed by this Board of Directors at this meeting with such changes as the General Counsel, or his delegate, may approve;
3. Counsel for the Company, or his delegate, the President or his delegate, and any Vice President are hereby each individually authorized, empowered and directed to take any and all actions as may be necessary or appropriate, and to approve the forms, terms or provisions of any agreement or other documents as may be necessary or appropriate to carry out and effectuate the purpose and intent of the foregoing resolutions; and
4. All of the actions of the counsel for the Company, which actions would have been authorized by the foregoing resolutions except that such actions were taken prior to the adoption of such resolutions, are hereby severally ratified, confirmed, approved and adopted as actions on behalf of the company.

Date: January 18, 2010



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Damon N. Vocke  
General Counsel, Senior Vice President  
and Secretary for General Re Corporation

## OFFICER'S CERTIFICATE

I have read this Non-Prosecution Agreement and carefully reviewed every part of it with outside counsel for General Re Corporation ("General Re"). I understand the terms of this Agreement and voluntarily agree, on behalf of General Re, to each of its terms. Before signing this Agreement, I consulted with outside counsel for General Re. Outside counsel fully advised me of General Re's rights, of possible defenses, of the United States Sentencing Guidelines' provisions, and of the consequences of entering into this Agreement. I have reviewed this Agreement with the Board of Directors of General Re, which has been advised of its rights, of possible defenses, of the Sentencing Guidelines' provisions, and of the consequences of entering into the Agreement.

No promises or inducements have been made other than those contained in this Agreement. Furthermore, no one has threatened or forced me, or to my knowledge any person authorizing this Agreement on behalf of General Re, in any way to enter into this Agreement. I am also satisfied with outside counsel's representation in this matter. I certify that I am an officer of General Re and that I have been duly authorized by the Board of Directors of General Re to execute this Agreement on behalf of General Re and all of its subsidiaries named in the Non-Prosecution Agreement.

Date: January 18, 2010



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Damon N. Vocke  
General Counsel, Senior Vice President  
and Secretary for General Re Corporation

## CERTIFICATE OF COUNSEL

I am outside counsel for General Re Corporation ("General Re") in the matter covered by this Non-Prosecution Agreement. In connection with such representation, I have examined relevant General Re documents and have discussed this Agreement with the authorized representatives of General Re. Based on my review of the foregoing materials and discussions, I am of the opinion (i) that General Re's representative has been duly authorized to enter into this Agreement by its Board of Directors on behalf of General Re and its subsidiaries; and (ii) that this Agreement has been duly and validly authorized, executed, and delivered on behalf of General Re and is a valid and binding obligation of General Re. Further, I have carefully reviewed this Agreement with the General Counsel of General Re. I have fully advised him of General Re's rights, of possible defenses, of the United States Sentencing Guidelines' provisions, and of the consequences of entering into this Agreement. To my knowledge, General Re's decision to enter into this Agreement is an informed and voluntary one.

Date: January 16, 2010



Ronald L. Olson, Esq.  
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