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3 In the Matter of the  
4 Rehabilitation of:  
5 SEGREGATED ACCOUNT OF AMBAC  
6 ASSURANCE CORPORATION

7  
8 Case No. 10-CV-1576

9  
10 PRESIDING: HONORABLE WILLIAM D. JOHNSTON

11  
12 PROCEEDINGS: Confirmation Hearing

13  
14 DATE: November 15, 2010

15 A P P E A R A N C E S

16 **MICHAEL B. VAN SICKLEN** and **MATTHEW R. LYNCH**, Attorneys at Law, FOLEY & LARDNER LLP, Madison, Wisconsin, appearing on behalf of Petitioner Sean Dilweg, Commissioner of Insurance of the State of Wisconsin, and the Department of Insurance of the State of Wisconsin.

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18 **DANIEL W. STOLPER**, Attorney at Law, STAFFORD ROSENBAUM LLP, Madison, Wisconsin, and **HENRY J. RICARDO**, **RICHARD REINTHALER**, **PETER IVANICK**, **WILLIAM PRIMPS**, and **EMILY SAFFITZ**, Attorneys at Law, DEWEY & LeBOEUF LLP, New York, New York, appearing on behalf of Ambac Assurance Corporation.

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20 **DAVID M. GREENWALD**, **PATRICK TROSTLE** and **ANDREW OLEJNIK**, Attorneys at Law, JENNER & BLOCK LLP, Chicago, Illinois, and **BRYAN NOWICKI**, Attorney at Law, REINHART BOERNER VAN DEUREN SC, Madison, Wisconsin, appearing on behalf of RMBS Policyholders.

1 A P P E A R A N C E S (cont'd)

2 **THOMAS J. WELSH**, Attorney at Law, ORRICK, HERRINGTON & SUTCLIFFE LLP, Sacramento, California, and **GREGORY W. LYONS**, Attorney at Law, O'NEIL CANNON HOLLMAN DeJONG & LAING, Milwaukee, Wisconsin, appearing on behalf of Depfa Bank plc.

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5 **CHRISTOPHER J. STROEBEL**, Attorney at Law, VON BRIESEN & ROFER SC, Madison, Wisconsin, and **CRAIG S. BLOOMGARDEN**, Attorney at Law, MANATT PHELPS & PHILLIPS, Los Angeles, California, appearing on behalf of Federal Home Loan Mortgage Corporation.

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8 **ANNE M. BENSKY**, Attorney at Law, GARVEY McNEIL & ASSOCIATES SC, Madison, Wisconsin, and **ANDREW DEVORE**, Attorney at Law, ROPES & GRAY, Boston, Massachusetts, appearing on behalf of One State Street.

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11 **STEVEN T. WHITMER** and **KEVIN WISNIEWSKI**, Attorneys at Law, LOCKE LORD BISSELL & LIDDELL LLP, Chicago, Illinois, and **STEPHEN MORGAN**, Attorney at Law, MURPHY DESMOND, Madison, Wisconsin, appearing on behalf of Wells Fargo Bank as Trustee for the LVM Bondholders.

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14 **CYNTHIA BUCHKO**, Attorney at Law, WHYTE HIRSCHBOECK & DUDEK, Madison, Wisconsin, appearing on behalf of Countrywide Home Loans, Inc.

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17 **LAWRENCE BENSKY**, Attorney at Law, LAW OFFICE OF LAWRENCE BENSKY LLC, Madison, Wisconsin, appearing on behalf of ALL Student Loan Corporation and Lloyds TSB Bank plc.

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20 **PHILIP BENTLEY** and **MATTHEW TEMKIN**, Attorneys at Law, KRAMER LEVIN NAFTALIS & FRANKEL LLP, New York, New York, and **NOREEN PARRETT**, Attorney at Law, PARRETT & O'CONNELL, appearing on behalf of the LVM Bondholders.

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22  
23 **THOMAS ROSS HOOPER**, Attorney at Law, SEWARD & KISSEL LLP, New York, New York, appearing telephonically on behalf of Bank of New York Mellon as Trustee.

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25 **LAURA GEIGER**, Attorney at Law, REED SMITH, Chicago, Illinois, appearing on behalf of Federal and National Mortgage Association, Fannie Mae

1 A P P E A R A N C E S (cont'd)

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3 **MICHAEL E. JOHNSON**, Attorney at Law, ALSTON & BIRD LLP, New York, New York, appearing on behalf of Wells Fargo and Bank of America as Trustee.

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5 **PAUL LUCEY**, Attorney at Law, MICHAEL BEST & FRIEDRICH, Milwaukee, Wisconsin, appearing on behalf of U.S. Bank Trust and Deutsche Bank Trust.

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7 **JAMES C. OWEN**, Attorney at Law, McCARTHY LEONARD & KAEMMERER, Chesterfield, Missouri, appearing on behalf of ALL Student Loan Corporation and Lloyds TSB Bank plc.

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10 **MARISA DONDLINGER**, Attorney at Law, appearing telephonically on behalf of the Customer Asset Protection Company.

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13 I N D E X O F W I T N E S S E S

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18 P R O C E E D I N G S

19 THE COURT: The circuit court for Dane  
20 County will be in session. The matter we are taking  
21 up is 10 CV 1576. The clerk's calling right now to  
22 get the people who are going to be participating by  
23 phone on the line. All right.

24 The matter today is the hearing on the  
25 confirmation of The Rehabilitation Plan submitted by

1 the Commissioner. And we've had a briefing schedule  
2 set, and we've had a number of responses, 15 or so  
3 briefs. I've got large folders of those. I've  
4 gotten through those. There was matters -- or were  
5 matters that came in this morning that were in the  
6 mail that didn't get to me because they were in the  
7 clerk's office. I have not gotten through those.

8 I was handed this morning a motion in  
9 opposition to the motion for relaxed admissibility  
10 standards, that is, evidentiary standards, and a  
11 motion in limine to exclude foundationless hearsay  
12 evidence. Did you wish to have that motion heard?  
13 Let's see. This is Mr. Nowicki?

14 MR. GREENWALD: Actually, this is David  
15 Greenwald on behalf of the -- Mr. Nowicki is  
16 Wisconsin counsel, and I've been admitted pro hac,  
17 Your Honor. David Greenwald from Jenner & Block.

18 THE COURT: Okay.

19 MR. GREENWALD: This motion is filed in  
20 response to the memorandum that OCI filed at the end  
21 of the day on Friday. So we got this to, Your Honor,  
22 just as quickly as we could, as the Court opened  
23 today.

24 I think -- I'm certainly happy to let  
25 Mr. Van Sicklen and Ambac look at the document. I

1 wouldn't ask them to get a ruling this morning. But  
2 I want wanted to alert Your Honor to our opposition,  
3 and I'd be happy to address it now or later. But  
4 because evidence will be taken today, Your Honor may  
5 want to take a recess and visit this. But I'd leave  
6 that to Mr. Van Sicklen and what he'd propose as  
7 well. But however Your Honor would like to proceed.

8 THE COURT: Before we go further, I'm  
9 just going to ask the clerk and reporters, have you  
10 had appearances yet?

11 MR. GREENWALD: No, Your Honor.

12 THE COURT: I doubt we have. Let's  
13 start by taking appearances. And as I'm looking at  
14 this, the order of proceeding, as I see it from the  
15 filings would be OCI, Ambac, they have as their  
16 witnesses Sean Dilweg, Roger Peterson, Cathleen  
17 Matanle and David Barranco, B-A-R-R-A-N-C-O, that  
18 they've identified.

19 Cross of those witnesses I have set down  
20 as follows: Deutsche Bank and U.S. Bank, Treasurer  
21 of Ohio, Depfa Bank plc.

22 MR. VAN SICKLEN: Your Honor, I don't  
23 mean to interrupt. I think I've been involved in  
24 extensive communications with most of the objectors,  
25 and I think it would be helpful if I could, once we

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1 do the appearances on the record, maybe make some  
2 introductory remarks and sort of help the Court  
3 organize what I think is an agreed, you know,  
4 arrangement with the various parties here.

5 THE COURT: You have an agreed  
6 arrangement? Then I don't need to go through the  
7 remaining pages of my presentation. Let's start with  
8 appearances, starting with OCI, please.

9 MR. VAN SICKLEN: Good morning, Your  
10 Honor. Mike Van Sicklen and seated to my left  
11 Matthew Lynch of Foley & Lardner, representing The  
12 Rehabilitator and the Commissioner of Insurance for  
13 the State of Wisconsin and the Office of the  
14 Commissioner of Insurance. Also present on behalf of  
15 Commissioner's Office -- And, Your Honor, are we on  
16 the phone right now or can I depart from the mic?

17 THE COURT: I think we have people on  
18 the phone, don't we?

19 THE CLERK: Yes.

20 THE OPERATOR: Yes, Your Honor. This is  
21 the operator. We do have about a dozen people  
22 listening in by telephone.

23 MR. VAN SICKLEN: Okay. I would  
24 introduce behind me the Commissioner, Mr. Dilweg, and  
25 the Deputy Commissioner/Rehabilitator, Kimberly

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1 Shaul. Seated directly behind me is Roger Peterson  
2 of OCI, who Your Honor has seen before and been  
3 introduced through the four affidavits in this  
4 proceeding. And I would also note -- Well, go ahead.

5 THE COURT: All right.

6 MR. STOLPER: Good morning, Your Honor.  
7 Ambac Assurance Corporation appearing by Dan W.  
8 Stolper of Stafford Rosenbaum. And to my right is  
9 Henry Ricardo, Richard Reinthaler, and Peter Ivanick  
10 of Dewey & LeBoeuf. And just behind me is William  
11 Primps and Emily Saffitz, also of Dewey & LeBoeuf.  
12 And with us from Ambac is Cathleen Matanle, managing  
13 director, and David Barranco, also managing director.  
14 Thank you.

15 THE COURT: All right. Mr. Greenwald.

16 MR. GREENWALD: Yes. David Greenwald.  
17 I'm here representing Aurelius Capital Management,  
18 LP; Fir Tree, Inc.; King Street Capital, LP; King  
19 Street Capital Master Fund, Ltd.; Monarch Alternative  
20 Capital, LP; and Stonehill Capital Management, LLC.  
21 And that's the group that we've been referring to as  
22 the RMBS Policyholders in our pleadings.

23 MR. WELSH: Good morning, Your Honor.  
24 Tom Welsh of Orrick, Herrington & Sutcliffe and Greg  
25 Lyons representing Objector Depfa Bank plc.

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1 MR. BLOOMGARDEN: Good morning, Your  
2 Honor. Craig Bloomgarden of Manatt, Phelps &  
3 Phillips on behalf of the Federal Home Loan  
4 Corporation, also known as Freddie Mac, in  
5 conservatorship.

6 MR. OWEN: James Owen, with McCarthy,  
7 Leonard & Kaemmerer, representing ALL Student Loan  
8 and Lloyds TSB Bank, plc. And with me is Larry  
9 Bensky.

10 MS. BUCHKO: Cynthia Buchko of Whyte,  
11 Hirschboeck & Dudek on behalf of Countrywide Home  
12 Loans, Inc., and Country Wide Home Loans Servicing,  
13 LP.

14 MR. WHITMER: Good morning, Your Honor.  
15 Steven Whitmer from Locke, Lord, Bissell and Liddell  
16 on behalf of Wells Fargo as Trustee for the LVM  
17 bondholders. Also with me is Kevin Wisniewski from  
18 Locke, Lord, Bissell and Liddell. And also from  
19 Murphy Desmond we have Stephen Morgan.

20 MR. BENTLEY: Good morning, Your Honor.  
21 Philip Bentley of Kramer, Levin, Naftalis & Frankel,  
22 for the LVM Bondholders. I'm here with my colleague,  
23 Matthew Temkin and also with Noreen Parrett of the  
24 Parrett and O'Connell firm.

25 MR. DEVORE: Good morning, Your Honor.

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1 Andrew Devore of Ropes & Gray. And I'm with Ann  
2 Bensky of Garvey, McNeil & Associates, representing  
3 One State Street, LLC.  
4 MR. BLOOMGARDEN: I'm sorry, Your Honor,  
5 Craig Bloomgarden again. I neglected to mention that  
6 Chris Stroebel of the Von Briesen & Roper firm also  
7 is here this morning on behalf of Freddie Mac.  
8 MR. JOHNSON: Good morning, Your Honor.  
9 Michael Johnson from Alston & Bird. I'm here on  
10 behalf of Bank of America, NA; Wells Fargo Bank, NA;  
11 Wilmington Trust Company; and Wilmington Trust, FSB,  
12 all in their capacities as trustees for certain  
13 securitization trusts.  
14 THE COURT: All right.  
15 MR. LUCEY: Your Honor, Paul Lucey of  
16 Michael, Best & Friedrich, representing U.S. Bank  
17 Trust; U.S. Bank -- I'm sorry -- Deutsche Bank Trust;  
18 Deutsche Bank U.S.A. Trust in their capacities as  
19 trustees of certain residential mortgage-backed  
20 securities.  
21 MS. GEIGER: Good morning, Your Honor.  
22 Laura Geiger from Reed Smith on behalf of Federal and  
23 National Mortgage Association, Fannie Mae.  
24 MR. GREENWALD: And, Your Honor, I  
25 neglected to identify the others from my firm who are

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1 here as well as the Reinhart firm, if I could, for  
2 the record. I'm joined here by my partner, Patrick  
3 Trostle and Drew Olejnik, from Jenner & Block, both  
4 of whom who have been admitted pro hac. And then  
5 Brian Nowicki from the Reinhart firm from Wisconsin.  
6 THE COURT: Have we everyone now who  
7 wishes to have their appearance noted?  
8 MR. VAN SICKLEN: I would note one  
9 other -- it's not an appearance, Your Honor, it's  
10 just a person attending. It's the Commissioner's  
11 mother, a fellow retired judge, Judge Dilweg, is  
12 seated in the back by the door in the back,  
13 attending. So if you need any help on rulings, just  
14 feel free.  
15 THE COURT: So Judge Dilweg, would you  
16 get this motion in limine ready? You wouldn't have  
17 time to brief it if I did, would you? All right.  
18 Did the clerk get all of those names?  
19 THE CLERK: Yes.  
20 THE COURT: You've got a list of them.  
21 All right.  
22 Now, regarding who's going to be  
23 questioning --  
24 MR. ROSS HOOPER: We have a telephonic  
25 appearance, Your Honor. Thomas Ross Hooper of Seward

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1 & Kissel, LLP, on behalf of Bank of New York Mellon  
2 as Trustee, Indenture Trustee or collateral agent for  
3 the benefit of holders and/or secured parties of  
4 certain mortgage-backed securities, other  
5 asset-backed securities collateralized loan  
6 obligations and collateralized debt obligations.  
7 Thank you, Your Honor.  
8 THE COURT: Anyone else on the phone?  
9 MS. DONDLINGER: This is Marisa  
10 Dondlinger, appearing on behalf of the Customer Asset  
11 Protection Company.  
12 THE COURT: Others?  
13 THE OPERATOR: Your Honor, this is the  
14 operator. There are a number of other parties that  
15 are nonattorneys that are on a listen-only status.  
16 THE COURT: All right. Thank you. Do  
17 we have everybody now? All right.  
18 Then, Mr. Van Sicklen, you asked to make  
19 opening statements regarding the procedure.  
20 MR. VAN SICKLEN: Yes, Your Honor.  
21 Given the number of parties interested in the  
22 proceedings today, we've had a number of  
23 communications trying to organize this and get it  
24 before you in an orderly fashion. And I'd like to go  
25 through some very recent important developments, go

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1 through some evidentiary agreements, go through, you  
2 know, the order of proof, talk about the submissions  
3 that OCI has already been made that constitute, we  
4 believe, our prima facie case for confirmation and  
5 note after I get done with those types of remarks and  
6 get to the details of some stipulations about  
7 evidence and the like that we've reached, and I will  
8 allow time at the end of my remarks, there are  
9 several parties whose counsel have asked to make --  
10 have some time to make some preliminary objections,  
11 and I will discuss those and introduce those issues  
12 and reserve a little time to respond to those before  
13 we start with the witnesses. So that's sort of the  
14 back drop of what I'd like to accomplish first.  
15 We've agreed that we will not be using  
16 this morning to make formal oral arguments on the  
17 substantive issues covered by all the briefs, that  
18 what my remarks will be more about, you know, the  
19 written evidence before you, some of these  
20 developments and sort of a process, and the notion  
21 being unless the Court indicates a different  
22 preference, that we would reserve any kind of longer  
23 oral arguments about the legal issues and evidence  
24 for the end of the hearing, depending on your further  
25 guidance and how things go in the next several days.

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1 But with that, I will, you know, make  
2 clear that several of these other lawyers do have  
3 some points that they want to make before I call my  
4 first witness, and so if the Court will be patient  
5 and allow me to sort of walk through these things, I  
6 think it will help bring guidance to the proceedings.

7 THE COURT: Go ahead.

8 MR. VAN SICKLEN: Okay. First I'd like  
9 to note that there have been some very recent  
10 important and, we believe, extremely positive  
11 developments. And there's really five. And I'd like  
12 to walk through those.

13 First is last Friday there were two very  
14 positive developments which have been posted but very  
15 late in the day and into the weekend on the web site,  
16 Your Honor. First is that OCI did receive the SEC  
17 No-Action Letter as requested by The Rehabilitator.  
18 As the Court may recall from our filings, that's a  
19 condition precedent to starting the hearing this  
20 morning and to proceeding to have a confirmation  
21 order. And both the Rehabilitator's written request  
22 and the SEC No-Action Letter is posted on the web  
23 site. And it's also part of the submissions that  
24 I'll be getting into that constitute some of the  
25 written materials that the Rehabilitator is asking

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1 the Court to consider in the confirmation process.  
2 The SEC decision is important because it allows the  
3 Rehabilitator through the Segregated Account in  
4 reliance on the exemption under 3110 of the  
5 Securities Act of 1933 to issue surplus notes to  
6 holders of claims under our plan without registration  
7 under the Securities Act. That's important to all of  
8 the parties in interest because it makes the surplus  
9 notes more tradeable and valuable. And we'll have  
10 some discussion through the witnesses later. But I  
11 wanted to make sure the Court was aware that we're  
12 starting the hearing today with that No-Action Letter  
13 from the SEC in hand and posted so that everybody can  
14 see it. And we've also assured the SEC that we've  
15 provided appropriate notice, we've done it in  
16 writing, we've done it through the web site, we've  
17 done it in multiple respects, electronically. All of  
18 that, again, is part of our submission to the SEC,  
19 and all of it's posted on the web site, and we  
20 welcome anybody that wishes to, you know, participate  
21 today and through the rest of the hearing to be  
22 heard, given such weight as the Court deems  
23 appropriate. We're proceeding in open court I want  
24 to make that clear so that the SEC takes comfort that  
25 that's how we're proceeding.

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1 The second important development last  
2 Friday was the Wisconsin Court of Appeals decided a  
3 petition for permissive appeal and a motion to stay  
4 this hearing by ALL and Lloyds, which was supported  
5 by letter brief to the Court by Depfa, all of which  
6 are posted, and that decision is posted.

7 I believe when I'm done with my  
8 introductory remarks Mr. Welsh on behalf of Depfa  
9 wishes to renew his request for a stay or adjournment  
10 of this proceeding but I submit that issue was  
11 decided by the Court of Appeals following his letter  
12 submission last Friday.

13 The third area of important developments  
14 is that starting from starting Friday and over the  
15 weekend we reached agreement by stipulation, which  
16 have been all been filed and posted, regarding a  
17 number of the objecting witnesses that were named,  
18 that they would not be called as witnesses in open  
19 court but instead would rely upon the affidavits that  
20 they had previously submitted in this matter. And  
21 I'll run through those stipulations and the  
22 personalities involved.

23 First is the affidavit of Nancy  
24 Henderson by Depfa Bank.

25 Second is the affidavit of Charles Brehm

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1 submitted by Wells Fargo in its capacity as trustee  
2 for certain RMBS trusts.

3 The third is the affidavit of Kimberly  
4 Jacobs, submitted by the Bank of America in its  
5 capacity as trustee for certain RMBS trusts.

6 The next group were three affidavits  
7 that were submitted by ALL and Lloyds, those being  
8 William Barbagallo, B-A-R-B-A-G-A-L-L-O, Frederick  
9 Bingham, B-I-N-G-H-A-M, and Thea, T-H-E-A, Watkins.

10 And I'd like to call the Court's  
11 attention to -- and, again, those are filed with the  
12 Court but they probably are literally coming in by,  
13 you know, e-mail and the website postings over the  
14 weekend, Your Honor, but they all have a core  
15 stipulation in them. And that is that these  
16 witnesses would not appear so we did not have to  
17 prepare and they did not have to inquire the  
18 inconvenience of their schedules and the like to come  
19 here this week.

20 But as to the two experts witnesses  
21 Bingham and Barbagallo, we expressly by stipulation  
22 in Paragraph 2 stipulated that the Rehabilitator  
23 reserves and may assert all evidentiary objections to  
24 statements contained in the affidavits as to those  
25 witnesses.

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1 The other stipulation, which is in all  
2 of the stipulations for all of those conditions --  
3 and I'll read it into the record -- is that, quote,  
4 "The Rehabilitator's disclosure statement, including  
5 written amendments and supplements thereto and any  
6 written responses of the Rehabilitator to written  
7 questions filed by interested persons on or about  
8 November, 8, 2010, in affidavits previously filed by  
9 the Rehabilitator in this proceeding shall be deemed  
10 admitted in evidence and shall constitute part of the  
11 record of the plan confirmation hearing. That's in  
12 each and every one of those stipulations, Your  
13 Honor -- and I'll get back to that in a minute --  
14 that really is going to go leave, I believe, as live  
15 witnesses the four witnesses identified by the  
16 rehabilitator, which is the Commissioner himself,  
17 Mr. Dilweg; the Commissioner's assistant, Roger  
18 Peterson, and he would be the second witness we would  
19 call live; then we would have Kathy Matanle and David  
20 Barranco from the company. And they were all timely  
21 listed and identified in their subject matters  
22 previously disclosed. Those would be our live  
23 witnesses. We've agreed with all of the parties that  
24 at least joined the communication in the last several  
25 days that any objections made to questions and

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1 answers by one side or the other in the live  
2 testimony process would be for all of the parties in  
3 that side in interest. Essentially that if one of  
4 the objecting parties objects to a party, they  
5 wouldn't all have to join that, you know, one at a  
6 time here because it would be very cumbersome and  
7 slow down the proceeding. And conversely that would  
8 also be true for objections made by parties in  
9 support of the plan, the Rehabilitator, Ambac and  
10 anybody else. If we had an objection or motion to  
11 strike or the like in regard to evidence, the notion  
12 being that we wouldn't get bogged down having 20  
13 people say "Me too" on an evidentiary  
14 question-and-answer issue. Again, I'll come back to  
15 the evidence in a minute a little more, Your Honor.  
16 There's only one other live witness I  
17 believe left that was identified by the objecting  
18 parties, and that's the RMBS expert witness, James  
19 Schack. And there may be a witness or two that was  
20 mentioned by Deutsche Bank who put in very short  
21 submissions mostly just authenticating documents.  
22 We've been unable to determine yet whether those  
23 witnesses will be appearing or proceeding by  
24 affidavit like the rest of the witnesses. But I am  
25 pleased that this should streamline the hearing by,

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1 you know, substantially reducing the number of  
2 witnesses testifying live as opposed through the  
3 written evidentiary submissions and affidavits.  
4 The fourth point and recent development  
5 I'd like to note I think the Court is fairly aware of  
6 it. Is the protections, and I believe the RMBS  
7 counsel intends to get into this a bit. But as you  
8 recall, a little more than a week ago, week and a  
9 half, we had the emergency injunction proceeding here  
10 in regard to the parent company, the holding company,  
11 AFGI's bankruptcy, and the steps that the  
12 Rehabilitator took immediately in advance of that  
13 bankruptcy to protect the Segregated Account and  
14 Ambac. And those efforts and the Court's order are  
15 all posted. But the basic effort there was to  
16 insulate AAC and the Segregated Account from the  
17 effects of that bankruptcy in regard to claims for  
18 avoidance actions coming out of the bankruptcy, and  
19 an IRS claim, et cetera. The one new development  
20 that you may not be aware of, although it will be  
21 gone into later this week is that AFG also has a  
22 similar injunction from the top down, if you will, in  
23 regard to the IRS, which was -- the process and  
24 procedure and timing was stipulated to by the IRS and  
25 the bankruptcy court, which does protect AFG and all

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1 of its consolidated affiliates, which include AAC,  
2 from any kind of precipitous action by the IRS. And  
3 so we are pleased that we have done what we could to  
4 try to insulate any effects on Ambac and the  
5 Segregated Account coming out of that bankruptcy  
6 proceeding.  
7 The fifth and final recent development  
8 before I get to some other matters is I'm very  
9 pleased to report that we appear to have reached a  
10 major settlement in regard to one of the objectors.  
11 And that was the reason I was a minute or two late  
12 coming into the courtroom. So I do apologize for any  
13 apparent rudeness in that regard.  
14 It deals with the Las Vegas Monorail  
15 Bondholder Group represented by Kramer Levin and  
16 Ms. Parrett here locally. As you know and as  
17 indicated in some of the materials we filed, that is  
18 the single largest exposure in the Segregated  
19 Account. It's a group of parties which have two  
20 consolidated appeals presently pending in the Court  
21 of Appeals. They have filed some written objections  
22 that are before you, Your Honor. And we have Ambac,  
23 the Rehabilitator and the LVM Bondholder Group with  
24 one of their members not participating at present  
25 have reached an agreement on the business points for

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1 a settlement.

2 And we're in the process of reducing it  
3 to a written settlement agreement. It's one of the  
4 reasons I look tired today, is that we've worked long  
5 and hard last night and early this morning to  
6 finalize that. It's not quite done. There are some  
7 tricky drafting legal issues because it calls for --  
8 while the simple economic side of it is relatively  
9 straightforward once we reached agreement on the  
10 numbers, it does involve several complicated  
11 conditions subsequent, dealing with approval by Your  
12 Honor, which is the first and most important  
13 condition -- and I'll get to that in a minute -- and  
14 then going forward in Minnesota in a separate  
15 proceeding to bind the entire bondholder class and  
16 the like and dealing with the pending deals. But  
17 right now we're not in a position to file it. It's  
18 not all completely nailed down. One of the tricky  
19 side issues is that the LVM Bondholder Group  
20 constitutes a very strong in a majority of the  
21 bondholders, but they have an constitutional trustee,  
22 Wells Fargo, who's also been participating as  
23 essentially a partner or another interested party in  
24 regard to the LVMs. They have not yet, given the  
25 fast pace of the settlement developments, had enough

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1 time to become comfortable with what position they're  
2 going to take. Our position and the LVM Bondholders'  
3 position is that we can proceed regardless of Wells  
4 Fargo's position, but we certainly are working hard  
5 to get them comfortable.

6 But the salient point is we anticipate  
7 bringing it to you for rapid approval, hopefully even  
8 later this week. But we need to finalize the  
9 drafting, probably after court tonight, and get that  
10 finalized and nailed down. But we're very far along  
11 in that process. And so I will proceed on to some  
12 other points, but maybe it would be appropriate to  
13 take a short detour to let Mr. Bentley, who  
14 represents the LVM Bondholders, and Mr. Whitmer, who  
15 represents Wells Fargo, indicate to Your Honor their  
16 position to make sure I've correctly identified this  
17 new development, which, again, I emphasize to you and  
18 everyone else we're going to bring to you for  
19 approval with disclosure of the terms.

20 But when they're done I would like to  
21 come back to continuing my remarks. Mr. Bentley or  
22 Mr. Whitmer.

23 MR. BENTLEY: Good morning, Your Honor.  
24 Philip Bentley for the LVM Bondholders. Mr. Van  
25 Sicklen's description of where we are is entirely

22

1 accurate. We have, in fact, reached an agreement in  
2 principle on the economic terms, but, as he said,  
3 there are some quite complicated legal issues that  
4 we're working through. We're pretty far along in  
5 negotiating and documenting those. We do have a  
6 little ways to go. So we're hopeful that we will get  
7 all of the way there and have a finalized and signed  
8 agreement, perhaps tonight or least within the next  
9 few days, and we will then present it to the Court.

10 THE COURT: Go ahead.

11 MR. WHITMER: Good morning, Your Honor.

12 Steven Whitmer on behalf of Wells Fargo as trustee  
13 for the LVM Bondholders. Mr. Van Sicklen is correct  
14 that Wells Fargo has not yet had the opportunity to  
15 evaluate the terms of any potential settlement, nor  
16 have we been presented with a full set of terms to  
17 even consider yet. At the time those terms are  
18 presented to Wells Fargo, Wells Fargo is obligated to  
19 undertake its own independent review. Wells Fargo  
20 will not prejudge that settlement one way or the  
21 other until we've had the opportunity to review it in  
22 its entirety and then consider it. And then as we've  
23 advised both OCI's counsel and we've advised the LVM  
24 bondholders' counsel, Wells Fargo will undertake that  
25 review in an expeditious manner. But I don't know

23

1 that it's realistic, Your Honor, in light of where  
2 we're sitting today that that review will be  
3 completed by Friday. So Wells Fargo's position was  
4 that we are requesting and will request the  
5 opportunity to fully review whatever proposal is  
6 presented, and we'll respond expeditiously.

7 THE COURT: All right.

8 MR. VAN SICKLEN: I'll continue, Your  
9 Honor. I would note before I get to some of the  
10 marshaling through the evidence that we're relying  
11 upon, the written evidence and some of the agreed  
12 procedures that I am aware that there are several  
13 parties who want to make remarks, and I'll come back  
14 to those, but the RMBS counsel have an issue  
15 regarding your competence to proceed today. That was  
16 briefed by us in you reply brief. I believe Mr.  
17 Greenwald wants to make some remarks about that. I  
18 am fully prepared to respond to it and continue. So  
19 we'll come back to that at the end.

20 I believe Mr. Greenwald, as he  
21 described, has a somewhat difference of opinion with  
22 us regarding the evidentiary standards and the like.  
23 We did file a brief last week on that point. I'm  
24 also ready and able to fully argue that point this  
25 morning when I get through my other remarks. I think

24

1 it's important we get that resolved right up front.  
2 And there's no reason to delay. It's a  
3 straightforward issue.  
4 Third, I believe Mr. Welsh on behalf of  
5 Depfa wishes to renew for the record his request for  
6 staying the proceedings today, so we need to allow a  
7 little bit of time about that. I believe that  
8 Mr. Bloomgarden wants to make a remark and so we'll  
9 save time for those before I call my first witness.  
10 I don't want anybody to feel they're going to be cut  
11 out of that opportunity by the balance of my remarks.  
12 With that preview, I would like to go  
13 through -- and this isn't by way of oral argument on  
14 the merits, but I want to make our order for the  
15 Court at the outset of this proceeding in which we're  
16 the party, we're the petitioner, and I think we have  
17 that full right. And I want to go through and  
18 marshal the written submissions that we believe fully  
19 support the confirmation order that we're requesting  
20 and we believe it's appropriate for the Court to  
21 include those in the record and to consider them and  
22 we're relying upon them rather than spending endless  
23 amounts of, I believe, unnecessary additional time,  
24 you know, reading them into the record or doing it  
25 all orally. We believe the written submissions we've

25

1 put in are the best and most organized and  
2 comprehensive way of building the Rehabilitator's  
3 record for confirmation. And so with your patience I  
4 would like to walk through this, because, frankly,  
5 it's the most important part, in a lot of respects,  
6 of our request for confirmation. While we're going  
7 to make available and put some live testimony on, we  
8 believe that the written submissions are really the  
9 most important part of this, and part of our  
10 willingness to put these witnesses on is to do what  
11 we've been doing since the beginning of this  
12 proceeding, let people ask their questions. We've  
13 done that through the website process, which I'll go  
14 through in a minute. We did it last week, as you may  
15 have seen through your scheduling order for this  
16 hearing. We encouraged people to put their written  
17 questions in. We received roughly 150-plus factual  
18 written questions, and we answered those in writing.  
19 Et cetera. So we are offering the witnesses both for  
20 their substantive affirmative testimony but frankly  
21 to allow people to ask their further questions.  
22 We've tried to anticipate and respond to all those  
23 questions throughout and I'd like to walked through  
24 that.  
25 The first part of our written

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1 submissions, Your Honor, which we feel,  
2 notwithstanding the RMBS evidentiary motion, can and  
3 should be part of this record. And consistent with  
4 how you've handled all prior rehabilitations, it's an  
5 informal, you know, regulatory process, as you've  
6 noted in your prior decisions. You know, your  
7 decision back in July 16th noted that at length. It  
8 is not a formal, you know, litigated adjudicative  
9 posture. And that's consistent with the SEC  
10 requirements that we be public, open, allow people to  
11 be heard and not exalt evidentiary form over  
12 substance, particularly in a bench proceeding before  
13 a judge who has handled all of these proceedings in  
14 Wisconsin for 20-plus years.  
15 The first of our written submissions,  
16 Your Honor, started around March 24th of this year.  
17 And that consisted of the Commissioner's sworn  
18 verified petition with exhibits and all of the  
19 related motions and orders, and it continued  
20 thereafter with the four affidavits of Mr. Peterson,  
21 the first pertaining to the history and development  
22 of the Segregated Account and the bank settlement;  
23 the second Peterson affidavit dealt with the  
24 consummation in full of the bank settlement after  
25 both you and the Court of Appeals declined to grant

27

1 any kind of a temporary injunction of closing that  
2 transaction; Mr. Peterson's third affidavit dealt  
3 with the Weinstein settlement that you approved; and  
4 the fourth dealt with the injunction issues raised  
5 back in June that were decided more recently in  
6 October of this year.  
7 We also are relying upon the two Cathy  
8 Matanle affidavits that we submitted jointly with the  
9 company.  
10 And so those would be sort of the prior  
11 affidavit support.  
12 We also want to walk through and with  
13 your permission would use as sort of a demonstrative  
14 evidence -- or exhibit, not evidence -- but we've  
15 printed out just some screen shots of the Ambac  
16 policyholders dot.com website that we've set up  
17 pursuant to your original March 24th order to be of  
18 service to all of the interested parties, all of the  
19 individual bondholders, note-holders, et cetera, out  
20 there, and really it's been a central way of  
21 communicating to the world. And it's been a way of  
22 communicating not just limited to sending things to  
23 the lawyers but to the world. And it's been an  
24 interactive process, as I want to get through.  
25 So I do have some copies. I do not have

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1 copies for everybody in the room. But it's really  
2 just, again, a demonstrative thing to walk through  
3 because it's an easy way as a check list to walk  
4 through the written submissions that we're counting  
5 on as part of our support for confirmation, Your  
6 Honor. And I do have a dozen or so extra copies for  
7 people, but they've all seen it, it's been, you know,  
8 we get hundreds and hundreds of hits on the site  
9 every day in regard to this proceeding. So the  
10 lawyers are familiar with what it looks like. And my  
11 purpose in giving it to you is just so that you can  
12 readily walk through the checklist of documents.

13 THE COURT: Court officer, bring it up,  
14 please.

15 MR. VAN SICKLEN: And while Mr. Lynch  
16 hands out the extra copies, Your Honor, I'd note that  
17 the first sort of half of it is just printing right  
18 off the computer screen, and so it doesn't fully look  
19 like it does live on the computer. The back half is  
20 the same pages but done as a print, screen print, so  
21 it does show how it actually looks, but it's a little  
22 harder to read the print on the screen print. So  
23 it's really easier to follow through on what we just  
24 printed off the computer.

25 But the first page it just lays out,

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1 it's sort of the home page, Your Honor. And I do  
2 hope that you've had a chance to go use it yourself.  
3 It's an easy way to find documents and information.  
4 And the top box, which I'm going to come to in a  
5 minute, lays out all the documents pertinent to the  
6 Plan of Rehabilitation. And we'll go through those  
7 in a minute. And it talks about questions and  
8 answers and the schedule for other proceedings and  
9 the like.

10 The second big drop down box that has  
11 individual sections of the website -- and, again,  
12 this is a website that we developed pursuant to the  
13 order that you entered back in March to facilitate  
14 communications in this matter.

15 The second area is just sort of general  
16 information. It's a situation where we field  
17 questions from the many interested parties and we  
18 post the written answers so that everybody can see  
19 those answers. And there's numerous answers that  
20 have come in over time regarding all aspects of this  
21 proceeding. There's a glossary of technical terms  
22 for people's assistance, there's a box for ask a  
23 question. What that is, Your Honor, is we have a  
24 call line where every day we get written questions  
25 through that box, and we have guaranteed or

30

1 represented and we've lived up to that, I submit,  
2 that we will provide prompt response, within 48  
3 hours, to those people. And we do it by  
4 communicating back with you management services  
5 provider, because lots of people have individual  
6 questions, you know, where's my particular policy,  
7 how does this work, et cetera. So we've tried to  
8 field there directly responsive information to  
9 individuals.

10 The next big drop down box describes the  
11 Segregated Account. It gives details of every  
12 allocation of a policy. It lays out the whole  
13 process.

14 The next big drop down box is the legal  
15 regulatory notices, which is the first and most  
16 heavily used one, is all the court filings. Every  
17 day when we get any kind of court-filed submission,  
18 whether it's here or on appeal, whether it's by us or  
19 any other objecting party, it's promptly posted  
20 there. And it's a way of everybody getting  
21 information rapidly throughout. We also immediately  
22 post written notice of all hearings here as quickly  
23 as we have a hearing date. And, again, it's to do  
24 what the SEC has encouraged us to do, to be open and  
25 public, and we've done our best to accommodate that

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1 spirit.

2 The next big box is on the top of Page  
3 2. And I haven't dropped all these down in separate  
4 printouts. But it describes the Wisconsin Office of  
5 Commissioner of Insurance, its powers,  
6 responsibilities, it gives bios of, like, Mr. Dilweg  
7 and Ms. Shaul, and so forth. It explains how it  
8 works.

9 And then bottom of the second page is  
10 some of the types of articles that we post on the  
11 website about the Rehabilitation Plan.

12 The next one Mr. Dilweg will talk about  
13 in his testimony, but it's about the Ambac Advisor  
14 Council that he formed and appointed, and it gives  
15 information about who those people are. It's an  
16 independent group of people that have assisted the  
17 Rehabilitator in steering this rehabilitation and  
18 been a sounding board to the Rehabilitator and the  
19 Commissioner. Will get into that in his testimony.

20 The next big section -- and there's been  
21 more of those that get updated -- it just talks about  
22 the whole process.

23 The third page, I'm sorry, it's the  
24 fifth page in number but the top right says Page 2 of  
25 3 is the drop down. If you click the box for

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1 information about the plan of confirmation, plan of  
2 rehabilitation. And that's probably the most  
3 important page.  
4 If you will, I'll come back to that  
5 because that's where I'm going devote most of my  
6 time, Your Honor, but if you skip two pages ahead  
7 there's a section on questions and answers. Again,  
8 that's what I was describing earlier. These are all  
9 the questions that people ask that we post written  
10 answers to. A couple pages of that for examples.  
11 And I've just only printed out here the first couple  
12 pages, not all of them.  
13 The next page talks about the notice of  
14 hearings and directions to Your Honor's court.  
15 And then a couple pages back shows how  
16 all the court filings are organized each day in  
17 reverse chronological order with descriptions. And  
18 I've only printed a few of the many, many pages that  
19 compromise the Court filing list since March.  
20 A few pages back are the printouts about  
21 the people at OCI that are working on this matter and  
22 their bios. The first one's Mr. Dilweg and so forth.  
23 And then the back is the screen prints  
24 of how it looks live, but they're a little harder to  
25 read.

33

1 Now, if you would bear with me, I'd like  
2 you to turn back to the page, the drop down about the  
3 documents and information on the Plan which has a  
4 picture of the Commissioner with a -- it's -- If  
5 you're with me there?  
6 THE COURT: Is that the one "Click To  
7 View A Presentation?"  
8 MR. VAN SICKLEN: Right.  
9 THE COURT: Okay.  
10 MR. VAN SICKLEN: Immediately the day  
11 the Plan was filed the Commissioner filmed a  
12 presentation which we posted on the website that gave  
13 information about the Plan for interested parties so  
14 that they could hear from the Commissioner  
15 immediately.  
16 But the part I really want to call your  
17 attention to is the list of documentation that starts  
18 below that, which is the matters that we're asking  
19 you to consider and consider part of the record  
20 today.  
21 And it's in reverse chronological order.  
22 But the first is our reply brief that was filed last  
23 Friday. And that's not really a matter of evidence,  
24 but I would note that we received approximately 16,  
25 like you did, written objections, consisting of about

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1 300 pages of legal arguments plus affidavits. And  
2 our reply brief there, it's about 24 and a half  
3 pages, we believe fully addresses in an organized way  
4 all of the 300 pages of arguments that were filed in  
5 regard to this proceeding. And at the very end is a  
6 section on the competence issue that Mr. Greenwald  
7 and I will discuss in a minute.  
8 The next group of documents really  
9 though, really are part of the record here, and the  
10 first is the Rehabilitator's supplementations in  
11 support of confirmation responses to questions. And  
12 that, Your Honor, I have copies if you need. I  
13 believe you've been inundated in paperwork, but per  
14 your scheduling order we encouraged people to send us  
15 written questions they had about the Plan or the  
16 disclosure statement, and we received a lot of those.  
17 Some of those were more in the form of a statement,  
18 not like by topic of what they wanted to ask a  
19 witness about, but all the ones that are truly fact  
20 questions we endeavored to organize by subject  
21 matter, you know, irrespective of author, and then  
22 provide written responses. And if it would assist  
23 you, I have a copy here which might be useful, at the  
24 risk of giving you more paperwork.  
25 THE COURT: Well, why don't you bring it

35

1 up. My court officer will pick it up.  
2 MR. VAN SICKLEN: And this was served on  
3 all counsel of record electronically when we filed it  
4 and it was immediately posted.  
5 But just to walk through this, Your  
6 Honor, what we did is we explain in the introduction  
7 the process and your Court's order and then we took  
8 all of the many questions we got from each of the  
9 objecting parties who participated in that process,  
10 roughly 150, and organized them by subject. And then  
11 you'll see behind the question-and-answer process in  
12 which we try to, consistent with what your  
13 instructions were when we issued the scheduling  
14 order, to be able to field written responses from the  
15 Rehabilitator on specifics and technical things that  
16 are better addressed in writing with the opportunity  
17 to look at information and respond than the witnesses  
18 could possibly do live, you know, from rote memory  
19 sitting on the stand. So as you'll see, it's a very  
20 comprehensive set of information.  
21 At the end there are two tables that  
22 people asked us to present which describe the top 20  
23 policies by -- PV is present value -- of the expected  
24 loss exposures. You'll see the very first one there,  
25 Your Honor, by far the largest individual exposure in

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1 the Segregated Account, it's referred to as a  
2 bankrupt transportation policy, but that's the Las  
3 Vegas Monorail that we're in the process of  
4 finalizing the settlement on. And then it lists the  
5 rest by types of policies.

6 And then a second chart there is the  
7 General Account and the present value of expected  
8 losses.

9 And the point there is for you and  
10 interested parties to see the magnitude of scale  
11 difference between the exposures in the two different  
12 accounts. And I won't argue further about that. But  
13 that's that particular document, Your Honor.

14 One of the next documents was the  
15 Amendment No. 2 to the disclosure statement, and I  
16 also have an extra copy of that, if I could hand it  
17 to the bailiff. And I apologize for burdening  
18 parties who are probably very familiar with it, but I  
19 realize we've launched a massive amount of  
20 information to Your Honor, I think it's important to  
21 walk through it because this is an important part of  
22 our case. What this is was our effort to react to  
23 some of the questions and objections we got and  
24 provide some clarifications and additional  
25 information.

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1 The first page simply recites what we  
2 put before you back at the emergency injunction  
3 hearing. There's nothing new there except we  
4 formally make it part of the disclosure statement.

5 Then the next couple sections numbered  
6 with individual numerical numbers are clarifications  
7 and additions that we've made to our disclosure  
8 statement to react to and answer inquiries we got on  
9 the objections and try to narrow differences of  
10 opinion that some of the objectors had to technical  
11 points. And those speak for themselves, and we'll  
12 come back to argue, we may have succeeded in full  
13 with some objectors on our clarifications, and others  
14 may still, you know, wish us to go further. But  
15 that's what we -- that was the point of that section.  
16 And then.

17 And then, Your Honor -- And that goes  
18 all the way through to Number Point 6. We talk about  
19 the release, in Number Paragraph 5 we talk about the  
20 form of the surplus notes in Paragraph 6, and then  
21 Roman Numeral II is -- builds upon what was in the  
22 original disclosure statement at Pages 8 through 9  
23 about the liquidation analysis. And here in response  
24 to a request by certain of the objectors we expanded  
25 that liquidation analysis, and Mr. Peterson will

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1 touch upon this in his testimony, but that's what  
2 consists of Amendment Number Two, your Honor.

3 The next document that we filed other  
4 than the brief is an amended order, modifying what we  
5 had previously submitted to you, which also tries  
6 to -- And may I first give a copy to the bailiff?

7 Your Honor, several of parties were  
8 concerned that by merely making some changes that  
9 they requested for clarification in our disclosure  
10 statement or even the plan itself that they still  
11 felt that they would like the additional protection  
12 of having some of it put in the order, and so we  
13 tried to do that. And we circulated this too, with  
14 all of our filings last week.

15 And so this is the form order that's  
16 just been handed to you that we will be urging at the  
17 end of the confirmation hearing that you, if you  
18 believe that we have made our case, would enter, or  
19 some form very close to it.

20 And I would note that there are some  
21 important technical requirements that we need in any  
22 order of confirmation that satisfy the SEC No-Action  
23 Letter. And so you'll see some fairly technical  
24 provisions that try to assist the Court so that when  
25 we, if we are fortunate enough to have you grant our

39

1 request for confirmation, that the form of order is  
2 in a form that satisfies some technical requirements  
3 we need in regard to issuing the surplus notes and  
4 the like.

5 And so that's, again, the amendment here  
6 tries to deal with solving some objection issues, and  
7 that's -- so you'll see at the bottom of the -- well,  
8 the first couple pages deal with these detailed  
9 changes that parties have requested and, again,  
10 that's some of the effort we've made, just like with  
11 the LVM settlement, to narrow the differences of  
12 opinion that we have. It's very consistent with what  
13 we have in the Plan as the alternative resolution  
14 process. We're trying to work with people that have  
15 some unique, difficult, challenging issues, and this  
16 is a reflection of that, Your Honor.

17 Now I'd like to go back to some of our  
18 earlier filings back on October 8th. That was our  
19 main principal filing, and I believe you've had that.  
20 But it's our Notice of Filing and the Motion for  
21 Confirmation and we filed a comprehensive brief at  
22 that time dealing with all the legal issues because,  
23 as you've previously noted, this is an unusual  
24 confirmation hearing because many of the legal issues  
25 that one would normally see for the first time at a

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1 confirmation hearing have been briefed and argued and  
2 decided by you previously. So it was fairly easy to  
3 anticipate some of the arguments, and that was the  
4 purpose of that brief.

5 We have a witness list and a form of the  
6 order which we modified. And then we had an  
7 Amendment No. 1 to the disclosure statement, and that  
8 you have before you, Your Honor, and some of the  
9 witnesses likely will look at it. Particularly Mr.  
10 Peterson. But it involves the financial scenarios  
11 that OCI has offered to parties so they can  
12 understand and better appreciate the value of the  
13 surplus notes that we would be getting. And there's  
14 four tabbed pages to that amendment that have  
15 different sections under each of those four  
16 scenarios. And so that's that submission.

17 So, as you can see, under the balance of  
18 the key documents that are identified on the web  
19 printout I gave you, Your Honor, there's a wealth of  
20 other documentation that we've submitted in support  
21 of confirmation.

22 Attached to the Plan itself are those  
23 indicated agreements. The first is a fiscal agency  
24 agreement. That's the mechanism technically pursuant  
25 to which working with the bank of New York Mellon we

1 issue the surplus notes. It's a very complicated  
2 document, but it's done and finalized. It was a  
3 heavily negotiated, challenging agreement. We have  
4 copies of the surplus note, and both -- the first one  
5 is the senior surplus note, and then the second one  
6 is the junior surplus note that would be distributed  
7 if you confirm the plan to general contract claims  
8 and reinsurance claims. And so those forms are there  
9 for people to see.

10 We also have the form of the proof of  
11 claim that policyholders would submit pursuant to the  
12 Plan.

13 Attached to the disclosure statement  
14 we've provided a current updated corporate  
15 organizational chart reflecting some of the changes  
16 addressed in the original verified petition and  
17 since.

18 We've provided the other disclosed  
19 items. And, for the record, at the risk of boring  
20 people, I'd like to just put them in. It's the risk  
21 classifications. It's a written discussion of the  
22 Rehabilitator's projections, assumptions and  
23 methodologies. There's a written projected financial  
24 and operating results associated with each of the  
25 four scenarios, Scenario 1, 2, 3, and 4. There's

1 projected financial and operating results for those  
2 summarized at the back of each of the scenario pages  
3 which lists what parties might be expected to  
4 receive. There's some confusion, some parties have  
5 asked us, Your Honor, about, well, those scenarios  
6 don't show actual payments going out and principle  
7 and interest on the notes. And as Mr. Peterson will  
8 discuss in his testimony, that's because they're  
9 purely for illustrative purposes, that we do  
10 contemplate making payments.

11 The next list is a list of all the  
12 policy and CUSIP numbers in the Segregated Account so  
13 that people will clearly know whether they're being  
14 affected by the Plan or not. Because, as you know,  
15 there's a much larger group of policyholders in CUSIP  
16 number holders in the General Account.

17 There's the written plan of operation  
18 that we filed back in March. Attached to that are  
19 some of the key contracts governing performance of  
20 the plan if it's approach. That's the Management  
21 Services Agreement. The Cooperation Agreement. The  
22 Assumed Reinsurance Agreements that are allocated to  
23 the Segregated Account. It lists each of those so  
24 people are sure where they stand.

25 There's a copy of the secured note and a

1 **copy of the Aggregate Excess of Loss Reinsurance**  
2 **Agreement. Those are the payment-funding mechanisms**  
3 **for the Plan, if you approve it. There will be some**  
4 **discussions by the witnesses of how those two**  
5 **documents stand as adequate capital for the plan.**  
6 **There's, you know, the various other documents listed**  
7 **there.**

8 **Parties have asked us for more written**  
9 **financial information, and we've provided there at**  
10 **Line Items 13 through 17 the publicly available**  
11 **financial statements as described, for both the**  
12 **Segregated Account and the General Account for the**  
13 **periods indicated.**

14 **We also then the last two items, Number**  
15 **18 and Number 19, are the SEC No-Action Letter**  
16 **request by our law firm, Foley & Lardner, to the SEC**  
17 **and the positive response we received on Friday,**  
18 **again, all posted.**

19 **So those are the written evidence, if**  
20 **you will, Your Honor, that we would like to have you**  
21 **and we hereby move to put into the record for**  
22 **confirmation. I realize Mr. Greenwald wants to**  
23 **reserve the argument, so I will agree to reserve the**  
24 **argument until he will makes his point and I can**  
25 **respond here. But I do want it to show that I**

1 formally requested that you receive all that as part  
2 of the record you're considering for confirmation.

3 As I indicated, there are a couple of  
4 evidentiary agreements. The one about objections,  
5 you know, one for all, on each side, reciprocal.  
6 That's agreeable to us. The order of objections,  
7 when I'm done I believe Mr. Owen has a list of the  
8 order they're going to go in, Your Honor. It's going  
9 to be a little different than the list you started to  
10 read, so that's why I interjected. But I believe  
11 they're starting with Mr. Greenwald and so forth.  
12 But I'll let one of them read the list in when I'm  
13 done.

14 We also agreed, Your Honor, that as to  
15 our live witnesses, and I guess Mr. Shack, the one  
16 live witness that I'm expecting from the objecting  
17 parties, that they would not be recalled. So,  
18 therefore, cross-examination could exceed the scope  
19 of direct exam. I don't want a situation where the  
20 Commissioner, who's got other matters to attend to  
21 when he's done with his testimony has to keep coming  
22 back to be recalled. So we'd like to have each one  
23 go through their direct exam and any cross and  
24 redirect and then be excused.

25 There was some back and forth about

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1 whether objectors would subpoena these people and the  
2 like; and sort of the compromise we struck, my view  
3 is they don't have the right to issues subpoenas as  
4 nonparties, but we agreed to accommodate their  
5 request that they be given the opportunity to ask  
6 whatever questions they have. So we're doing that.  
7 And that's in keeping, again, with what we believe is  
8 the informal regulatory nature of this proceeding.

9 We also, just for the record, are  
10 restating the argument that I made, you know, I  
11 believe it was on November 5th about the RMBS Group  
12 of hedge funds and security broker dealers that  
13 they're not policyholders and while they have the  
14 right to be heard, just like, you know, anybody else  
15 that comes in here, they are not policyholders, we do  
16 not know their positions, and we believe that any  
17 weight to be given their arguments should be  
18 substantially reduced in light of that fact. And  
19 I've made that argument before, and there's, you  
20 know, an agreed form of order that we sent to you a  
21 few days ago that that deals in part with that. But  
22 we've kind of agreed to disagree on that for the time  
23 being. But I want to note for the record our  
24 continuing view that while they can be heard, they  
25 don't have standing and they're not policyholders.

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1 We can't from our side identify, and the company  
2 can't, their positions or whether they have the right  
3 to speak in regard to the trust, and the trustees who  
4 are here we believe have the legal right to speak on  
5 those issues.

6 Now, one of the other issues that Mr.  
7 Greenwald wants to discuss and I'd like to respond to  
8 it is they've argued that by virtue of the RMBS  
9 pending appeal to the Court of Appeals that you lack  
10 competence to continue this morning with the hearing.  
11 And we believe that was rejected by Court of Appeals  
12 on Friday. And I'm fully prepared and ready to argue  
13 that. But it's probably something that to protect  
14 his record he needs to deal with at the outset.

15 And I will note also that we vigorously  
16 disagree about the brief that he just put in this  
17 morning. It's basically asking you to employ a very  
18 rigid, more standard adjudicative type of evidentiary  
19 requirements, you know, that we have to spend lots of  
20 time laying foundation with witnesses about all the  
21 materials that I put in just now in front of you.  
22 And I, again, will reserve my arguments, but I  
23 believe we strongly disagree with that.

24 So those are my prefatory remarks, Your  
25 Honor. I guess we'll let the different objecting

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1 parties that have prewitness matters they wish to  
2 raise be heard and I be given a chance to respond.  
3 Thank you.

4 THE COURT: All right. Who's going to  
5 speak first then?

6 MR. GREENWALD: Your Honor, this is  
7 David Greenwald on behalf of the RMBS Policyholder  
8 Group.

9 There are three issues that Mr. Van  
10 Sicklen identified that we would want to address, and  
11 I'd take them in the order that Your Honor would like  
12 to hear them.

13 The first is the question of whether  
14 this Court has jurisdiction, given the pending  
15 appeal, to rule on or approve the Plan.

16 The second issue is the evidentiary  
17 issue that was briefed by OCI for the first time at  
18 the end of the day on Friday, which filed then a  
19 response to and a motion in limine this morning.

20 And the third is I wanted to address the  
21 issue of the RMBS, the five clients that we  
22 represent, They're position is the right to be heard  
23 with full weight in this hearing. And, Your Honor,  
24 I'd ask how you like to hear that. I think probably  
25 jurisdiction is the threshold question.

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1 THE COURT: I would agree. We either do  
2 or we don't.  
3 MR. GREENWALD: Yes, Your Honor. Let me  
4 address that then. In the objections that we filed  
5 on November 8th, at pages 12 to 13 of our objections  
6 we raised the objection for the Court's consideration  
7 that this Court, with all due respect, does not have  
8 jurisdiction to approve the plan. That is not to say  
9 that the Court does not have jurisdiction with regard  
10 to all matters relating to this proceeding. But  
11 specifically with regard to whether or not the Court  
12 may rule to approve the Plan. The basis for that is  
13 directly within the Wisconsin Statutes. An appeal  
14 pursuant to Wisconsin law strips the trial Court of  
15 jurisdiction with respect to the subject matter of  
16 the judgment. The judgment that is on appeal is your  
17 Honor's judgment from May, a final order that denied  
18 three different items. One had to do with the RMBS  
19 Group's motion to intervene Your Honor found we did  
20 not have standing as a party. That issue is on  
21 appeal.  
22 The second issue that Your Honor ruled  
23 on was whether the formation of the Segregated  
24 Account and the transfer of policies to the  
25 Segregated Account was lawful. That is on appeal.

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1 And, third, whether the circuit court  
2 had the authority to reviews the CDS settlement.  
3 That is also on appeal.  
4 The second is the most critical. The  
5 RMBS Group challenged the legality of the formation  
6 of the Segregated Account in part on the basis that  
7 there was absolutely no proof of adequate  
8 capitalization and also on other grounds both  
9 constitutional and statutory.  
10 The fundamental question, the predicate  
11 before this Court can rule to approve the Plan, is  
12 whether the Segregated Account was lawfully created.  
13 The record was delivered to the Court of Appeals in  
14 August, and by virtue of 808.0753, jurisdiction in  
15 this Court with regard to matters related to the  
16 legality of the Segregated Account, which would  
17 include approval of a plan based thereon, has been  
18 stripped from this court and is now in the appellate  
19 court.  
20 THE COURT: But you raised that in the  
21 appeal that I just got my copy of the order in this  
22 morning's mail. You raised that with the Court of  
23 Appeals at that time, didn't you?  
24 MR. GREENWALD: No, Your Honor. We have  
25 sought a stay. We did not -- at that point the

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1 appellate court had jurisdiction. We didn't ask  
2 them to tell this Court that it didn't have  
3 jurisdiction to rule on the Plan.  
4 And there are interim issues which this  
5 Court has dealt with which we don't suggest were not  
6 properly done by this Court to manage information  
7 sharing, to hear the parties seeking to clarify the  
8 right to proceed against other parties. Those are  
9 all properly within the jurisdiction of the Court.  
10 But the fundamental question to approve the Plan is  
11 directly related to the lawful creation of the  
12 Segregated Account upon which it is based. Wisconsin  
13 Statutes 808.075 provides that after the record has  
14 been transmitted the Court of Appeals -- transmitted  
15 to the Court of Appeals, the circuit court only  
16 retains the power to act in the narrow circumstances  
17 outlined by the statute. The statute says that in a  
18 case not appealed under Section 809.30, the circuit  
19 court retains the power to act on all issues until  
20 the record has been transmitted to the Court of  
21 Appeals; therefore, the circuit court may act only as  
22 provided in (1) and (4).  
23 This case in the not appealed under  
24 section 809.30, which provides appellate procedure  
25 for section 971.17 in criminal cases, on 971.7

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1 relates to the commitments of persons found not  
2 guilty by reason of mental disease or mental defect.  
3 At least we haven't had objections with regard to  
4 that, Your Honor. 807.01 and 4 do not apply here.  
5 One of the responses that OCI made in  
6 responding to this on last Friday was the argument  
7 that we have not we have not sought any remedy from  
8 the appellate court. 808.75(5) provides the method  
9 by which OCI could have asked the appellate court to  
10 provide this court with jurisdiction to consider  
11 approval of the Plan. 808.75 (5) allows a party to  
12 petition the appellate court for remand for  
13 consideration of certain issues. That did not occur  
14 here. 808.756 allows the amount at Court to remand  
15 for additional proceedings while an appeal proceeds.  
16 That has not occurred here.  
17 The motion for stay filed by ALL and  
18 Lloyds TSB last week or two weeks ago does not go to  
19 the issue of jurisdiction. There are questions about  
20 whether nit was procedurally properly raised. Really  
21 that does not go to the question of jurisdiction.  
22 The response -- And so if this Court has no  
23 jurisdiction, that is an issue that cannot be  
24 waived --  
25 And I would argue, Your Honor, that the

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1 proper procedure here would be for the Court not to  
2 rule on the Plan, approve or not approve until after  
3 the appellate court has disposed of the appeal that  
4 is currently pending for my clients.

5 Now, OCI has taken the position in its  
6 responding papers that this is a question of  
7 competency, not jurisdiction, and, two, as a matter  
8 of competency it can be waived and has been waived by  
9 the RMBS Policyholders.

10 I would make the following argument.  
11 The first is OCI stated that we have cited old case  
12 law and that more recent cases have cited the issue  
13 as a matter of competency of the court in that  
14 jurisdiction. I will call the Court's attention to  
15 very recent Wisconsin Supreme Court cases that have  
16 referred to this as stripping the circuit court of  
17 jurisdiction. And I will call the Court's attention  
18 to *In re John Doe* proceeding 2003 WI 30 at paragraph  
19 58 where the Court said as a general rule into the  
20 context of a direct appeal pursuant to Wisconsin  
21 Statute 808.03, service of a notice of appeal strips  
22 the circuit court of all jurisdiction regarding the  
23 case, except where there is a specific grant of  
24 authority permitting the trial Court to act. In  
25 *Tietzworth vs. Harley Davidson, Inc.*, another case

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1 decided by the Wisconsin Supreme Court in 2007, the  
2 Court stated once the circuit court issued an order  
3 dismissing *Tietzworth* complaint in its entirety and  
4 *Tietzworth* appealed that final order, the circuit  
5 court no longer had jurisdiction over the case.

6 This OCI cites the case of *Hengel vs.*  
7 *Hengel*, a Wisconsin appellate court case from 1984,  
8 suggesting that this is a question of competency  
9 versus jurisdiction. That case in fact has been  
10 overruled in part as it was codified by the very  
11 statute that we are citing here. But whether we call  
12 it competency or jurisdiction, this Court must  
13 refrain from ruling on the Plan.

14 With regard to the OCI's allegation or  
15 assertion that we have somehow waived competency of  
16 the court, they could cite to nothing that we have  
17 done that has waived the competency of the Court.  
18 The RMBS Group since it filed its appeal has asked  
19 for information, we have asked for clarification that  
20 we would not be in violation of the TRO in order to  
21 bring a certain fraudulent transfer action against  
22 Ambac's parent, Ambac Financial Group. That's a  
23 matter that's still pending before the Court and has  
24 not been ruled on and we have not filed a complaint  
25 pending the Court's ruling.

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1 And then we appeared on the scheduling  
2 to say Your Honor should take additional time and  
3 provide additional information.

4 None of those things would waive our  
5 right to argue that this Court is not competent to  
6 hear -- is not competent to rule on approval of the  
7 Plan, even if the argument and more importantly all  
8 the cases cited, you know, by OCI with regard to  
9 waiver have to do with whether or not a party at some  
10 point in the underlying proceeding raised the issue  
11 of competency of the Court, which we are hereby  
12 doing.

13 For all these reasons, Your Honor, we  
14 believe that this Court is divested of authority to  
15 consider the Rehabilitation Plan until the Court of  
16 Appeals has ruled on the pending appeals and would  
17 defer to your -- to the Court's discretion in  
18 determining whether or not to proceed with other  
19 matters that are within the Court's jurisdiction.  
20 But we definitely take the position and believe it's  
21 found in Wisconsin Supreme Court law and statute that  
22 the Court does not have jurisdiction to rule as  
23 requested by OCI.

24 THE COURT: Mr. Van Sicklen.

25 MR. VAN SICKLEN: Thank you. Now for

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1 the rest of the story. In fact this is a question of  
2 competence not jurisdiction. That's clear in the --  
3 if you look at our reply brief, starting at Page 22,  
4 we deal with this at great length. The most recent  
5 case out of our supreme court that deals generally  
6 with this, which, again, counsel doesn't mention, is  
7 the Village of Trempealeau case, 273 Wis.2d 76, which  
8 at Point 82 Justice Sykes makes clear that circuit  
9 court -- I'm quoting -- circuit courts in Wisconsin  
10 are constitutional courts with general original  
11 subject matter jurisdiction over all matters civil  
12 and criminal. Accordingly a circuit court is never  
13 without subject matter jurisdiction. And the case  
14 law we cite in our reply brief, the *Hengel v. Hengel*  
15 case, deals with the difference. And it is a matter  
16 of competency, and the difference is that it can be  
17 waived and certainly was here by the RMBS.

18 Additionally, this is a very unusual  
19 type of a regulatory special proceeding. Again, as  
20 discussed in our brief. It's not your standard case  
21 where an actual party to the proceeding takes an  
22 appeal and at that point there's really no purpose in  
23 the underlying proceeding continuing.

24 Here the RMBS aren't parties. They were  
25 denied intervention. The Kentucky prisoners filed a

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1 motion in which they sought to intervene and  
2 appealed. And if ever person which comes to this  
3 enormous regulatory rehabilitation proceeding can  
4 simply file a motion to intervene each and every time  
5 they have a motion and then stop the rehabilitation  
6 proceeding, it would essentially write Chapter 645  
7 out of our statutes. That would be an absurd result.

8 And the LVMS that we are in the process  
9 of finalizing the settlement with are a good example.  
10 They've taken two appeals from this proceeding, and  
11 the case is still rolling along, they're  
12 participating, they've filed objections, and the  
13 like. And for Mr. Greenwald to lightly traipse over  
14 the level of waiver by he and his clients I think is  
15 misleading to the Court. And again, our position is  
16 that this is not your standard type of proceeding  
17 where there's an appeal by a party and there's no  
18 reason for the underlying proceeding to continue  
19 because the plaintiff or defendant is on appeal.  
20 This is different. These are -- that's why you gave  
21 each of these objections the subletters and have been  
22 dutifully treating them as special proceedings that  
23 are ancillary to the main underlying case.

24 Every interlocutory or other appeal of a  
25 motion for intervention or the like does not and

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1 cannot stay this proceeding or you would just have  
2 serial filings. The RMBS would just keep filing  
3 motions and keep staying this procedure forever.  
4 That surely can't be the result. Nor is it the  
5 result that we've seen in the Court of Appeals. As  
6 Your Honor noticed, the decision last Friday, the  
7 motion by ALL and Lloyds joined by Depfa expressly  
8 talked about this hearing today. And our Court of  
9 Appeals was fully aware that there were these various  
10 appeals pending, including the RMBS appeal and this  
11 confirmation hearing was going forward today. The  
12 very last sentence after talking about the  
13 confirmation hearing and the like and all these  
14 various objections, the Court of Appeals unanimously,  
15 all three members of the panel said, quote, "The  
16 issues presented will be fully preserved in their  
17 factual context better developed following the  
18 confirmation hearing."

19 Now it's also, I think, interesting if  
20 we go back to the RMBS. When they first filed their  
21 request back on June 18, Mr. Nowicki and Mr.  
22 Greenwald for leave of having the Court of Appeals  
23 take their appeal. And I've got an extra copy for  
24 Your Honor. It's very telling what they told the  
25 Court of Appeals. And I would ask you to turn --

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1 this is the filing by Jenner & Block and their local  
2 counsel to the Wisconsin Court of Appeals at Page 6.  
3 And you can take a minute to read that, Your Honor.  
4 It's basically the text on that page.

5 But they're analogizing this proceeding,  
6 this rehabilitation is very much like a bankruptcy  
7 reorganization. And the quote is even though their  
8 interlocutory appeals from adversarial proceedings  
9 and the like where a Court supervises the ongoing  
10 rehabilitation, the party may obtain review of a  
11 discrete dispute within a larger case if the order  
12 disposing of the dispute, you know, leaves a claimant  
13 nothing more than to do then await the outcome of  
14 that. And that was our position in front of our  
15 Wisconsin Court of Appeals in trying to induce that  
16 Court to take their appeal, was that it wouldn't  
17 affect Your Honor's continuing competence to continue  
18 in this case. And that was their pitch. And I do  
19 think that's important.

20 And I would note in the Court of Appeals  
21 decision on June 18 -- I have a copy of that just to  
22 assist Your Honor -- I've handed you a copy have of  
23 the Court of Appeals' June 18, 2010 decision, which  
24 is posted on the website like everything else, in  
25 which the Court of Appeals deals with the RMBS

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1 request that their appeal be taken notwithstanding  
2 the fact that that case was continuing.

3 And on Page 4 in particular it talks  
4 about based upon the representations by the RMBS and  
5 the other appellants that the order was final as to  
6 those three groups of appellants. And then the court  
7 notes that the circuit court's order disposed of the  
8 entire matter in litigation between these parties.  
9 The appellants were not allowed to intervene in the  
10 circuit court and their motion for injunction was  
11 denied. There's nothing left for those appellants to  
12 do not in the circuit court and no reason to parse  
13 the order. The litigation between these parties are  
14 ended.

15 Now, Mr. Greenwald and his clients  
16 didn't heed that direction from the Court of Appeals.  
17 They've continued notwithstanding that they  
18 represented and induced our Court of Appeals to take  
19 the position that they were done in the rehab, that  
20 they've just sailed along merrily in this court,  
21 filing letters and motions actively since then. And  
22 I have a printout of all the things that the RMBS  
23 Group has done since that Court order, Your Honor.  
24 And this is just printing off CCAP the different  
25 entries. And this doesn't include, you know, the, as

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1 we know it at the end, all of the different letters  
2 they've written you. But since just July 16th of  
3 this year it notes all the different things they've  
4 been filing with you and participating. Right up to  
5 this proceeding they filed objections and the like in  
6 which they're actively participating. They want it  
7 both ways. They want to trick the Court of Appeals  
8 into thinking everybody's fine as to them, they're  
9 not participating here anymore, but they want Your  
10 Honor to consider their motions and arguments. And  
11 that's, you know, I think, improper. And not  
12 appropriate.

13 And so I would submit that the law's  
14 clear that this is a very unusual proceeding. It has  
15 thousands of interested parties of one nature or  
16 another. You've graciously allowed them all to be  
17 heard and participate multiple times even where  
18 they've taken these interlocutory appeals and every  
19 time they tag a motion to intervene on their motion,  
20 trying to make it a final appealable order. The  
21 Court of Appeals has caught on. And it would be  
22 absurd to frustrate out of their narrow undisclosed  
23 interest, which we still don't know what it is  
24 exactly, that they would stay forever the  
25 rehabilitation.

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1 And so for all those reasons I would ask  
2 you to find that you do have competency to proceed  
3 today, this is a unique and different type of  
4 proceeding. As a nonparty they don't the right to  
5 seek basically a serial set of stays and that the  
6 case law in Wisconsin, particularly like most  
7 recently the Village of Trempealeau, makes sure that  
8 you have the constitutional right and duty to  
9 proceeded to.

10 So for all those reasons I would  
11 encourage you to deny the RMBS's most recent effort  
12 to prevent you from confirming our Plan.

13 MR. GREENWALD: Your Honor, if I could  
14 be heard in reply.

15 THE COURT: Go ahead.

16 MR. GREENWALD: I'll take the last point  
17 first, with regard to what was stated to the  
18 appellate court. We have never taken the position  
19 that this case or this proceeding was stopped dead in  
20 its tracks as a result of that appeal. That is not  
21 what we said at page 6 of our response in the  
22 appellate court. And it's not what the law provides.

23 What it does stop is anything related to  
24 that appeal. And we have proceeded -- in fact, the  
25 things that Mr. Van Sicklen has just provided to you

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1 are the three things that I identified: The motion  
2 for information-sharing order, the motion to clarify  
3 the TRO, and our objections. Those are the only  
4 three things with multiple filings related to them.  
5 None of those are inconsistent with this Court  
6 continuing to move this proceeding along but not  
7 reaching the issue which is now in the appellate  
8 court and subject to its sole jurisdiction.

9 With regard to the point on appeal, I  
10 would also note and would not have raised it but  
11 because it's now been raised by the Court, the  
12 Court's order very significantly I think actually  
13 went out and called OCI's argument on appeal in that  
14 opinion that you have in front of you identified  
15 OCI's argument as disingenuous. They did not find  
16 anything of the sort with regard to my clients, and I  
17 would not have called that to Your Honor's attention  
18 but for the fact that Mr. Van Sicklen is now lauding  
19 that opinion as assisting him in this argument.

20 More fundamental --

21 MR. VAN SICKLEN: Wait, wait, wait. I  
22 would note that that comment there had nothing to do  
23 with the issue here, and Mr. Greenwald is now, you  
24 know, I think lowering himself in making that sort of  
25 suggestion. It dealt with a mootness argument about

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1 the bank settlement. Had nothing to do with this  
2 issue. Unless counsel wants to correct that, I would  
3 ask him to withdraw it.

4 MR. GREENWALD: Well, the opinion says  
5 what it says. It's in a footnote. It regards  
6 mootness, that's correct, Your Honor. But what I do  
7 object to is to suggest in any way that we have acted  
8 inappropriately in this case. We have acted straight  
9 down the line with what we believe is our right and  
10 authority to act on behalf of your clients.

11 We're going to draw the Court's  
12 attention now to the fundamental question I just  
13 raised. What is at stake in the Court's approving  
14 the plan if Your Honor looks at the proposed order  
15 submitted by OCI for Your Honor to enter at the end  
16 of this proceeding. In Paragraph 2 -- I'm sorry --  
17 Paragraph 3 OCI asks this Court to enter the  
18 following findings. And do we have -- is that the  
19 copy that is in front of the Court?

20 Your Honor, this is the order that Mr.  
21 Van Sicklen brought to your attention earlier this  
22 morning. If you look at Paragraph 3, OCI asks the  
23 Court to find the Rehabilitator has determined, one,  
24 the Segregated Account was legally established, two,  
25 the rehabilitation of the Segregated Account is

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1 lawful and appropriate. Both those issues, in  
2 particular the first, the first is exactly the  
3 question that is before the appellate court. OCI  
4 recognizes that it is the predicate for this Court  
5 finding that the plan should be approved, and there  
6 is no doubt that that is exactly the issue that is  
7 now in the appellate court. If OCI wanted to obtain  
8 the authority for this Court to proceed to enter this  
9 order and approve the plan, it could have through the  
10 statute sought a remand for that issue and it did not  
11 do so. This is a jurisdictional argument.

12 With regard to the issue of waiver, I  
13 want to address briefly the citation to the Village  
14 of Trempealeau vs. Mercoot (phonetic). In this case  
15 the Court did not hold that waiver occurred by  
16 proceeding below; the waiver occurred by failure to  
17 raise an objection as to the competency of the Court,  
18 which we are hereby doing. That case does not stand  
19 for the proposition that this Court should not now  
20 make the determination that it does not have  
21 jurisdiction and is not competent to rule on the  
22 request to approve the Plan.

23 With regard to the issue of my client's  
24 interest in this case, I'm going to address that  
25 separately, but I don't want to leave for a moment

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1 that unresponded to on the record. I have a detailed  
2 response to that issue, which I will raise later.  
3 But I, Your Honor, with regard to jurisdiction it's  
4 an issue that the Court, once alerted to it must rule  
5 on, regardless of how it's alerted, that  
6 jurisdiction's an issue that the Court can rule on  
7 sua sponte and that the appellate court can as well.

8 THE COURT: Your motion will be denied.  
9 The Court will find in this matter that it does have  
10 the competency to proceed with this hearing and the  
11 conducting of this hearing. I realize you're making  
12 a distinction between holding the hearing and  
13 approving the Plan based on the evidence and the  
14 presentations at this hearing. But at this point I  
15 believe the Court has the competence and has the  
16 jurisdiction to proceed.

17 The argument you make is that the  
18 appeal -- and we do have this interesting fact  
19 situation -- your status in this matter that the  
20 Court has denied the motion to intervene and that I  
21 believe you might also have on appeal. But at this  
22 point I'm not sure that you have the status to raise  
23 this, but assuming for argument that you do, I still  
24 believe the Court has jurisdiction.

25 It appears to me that you were raising

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1 these issues with the Court of Appeals, and I realize  
2 it wasn't your motion for stay, but I read this to  
3 say that they consented to this proceeding going  
4 forward. And as to whether or not I can rule on the  
5 Plan, I will await the end of the presentation of the  
6 evidence and make a determination there whether or  
7 not there is jurisdiction or issues and by then you  
8 may your appeal to the -- or answer from the Court of  
9 Appeals. But I don't see anything that prevents me  
10 from taking the evidence on the Plan today. I  
11 believe I have full authority to do that -- or not  
12 today but this week or however long this takes. And  
13 I don't believe at this point this Court is without  
14 the jurisdiction to hear that, take that evidence,  
15 and then at the end I will address when I have more  
16 time to relook at the filings that came in just this  
17 morning and with new argument on those today. But at  
18 this point the hearing will go forward. I will rule  
19 that I can conduct the hearing and take the  
20 presentation evidence in the hearing and your  
21 agreements, and the issue then of whether or not we  
22 have jurisdiction to rule on the Plan I will  
23 determine at that particular point. All right.

24 Mr. Van Sicklen, do we have anything  
25 further before we start taking evidence?

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1 MR. GREENWALD: There are two motions,  
2 Your Honor, that Mr. Van Sicklen identified and then  
3 that I am responsible for. One has to go an  
4 objection to OCI's moving into evidence the matters  
5 that were outlined for Your Honor and the proper  
6 evidentiary standard.

7 THE COURT: You want to address those  
8 now?

9 MR. GREENWALD: Yes, Your Honor, I'd  
10 like to do that.

11 THE COURT: Go ahead.

12 MR. GREENWALD: Your Honor, the first  
13 that we heard that OCI would take the position that  
14 its submissions made to the public on its website, et  
15 cetera, would be deemed evidence in this matter was  
16 Friday at the close of business when we received  
17 their memorandum on relaxed evidentiary standards.

18 It's one thing for other Court to note  
19 that those things on the website have been made  
20 available to the public; it's another thing for OCI  
21 to admit them as evidence in in this proceeding.  
22 Many of those documents -- and I want to distinguish  
23 from the affidavits -- the disclosure statement, the  
24 amended disclosure statements, et cetera, are signed  
25 by lawyers. There's no identification of who has

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1 provided -- who has prepared the information, how it  
2 was prepared, no authentication or foundation. It's  
3 all hearsay unless someone lays the proper foundation  
4 for it and is subject to cross-examination.

5 We filed, Your Honor, this morning at  
6 the earliest possible moment a brief that we would  
7 ask the Court to review before ruling, but I want to  
8 highlight the points that we raise there about the  
9 proper evidentiary standing. OCI has argued that  
10 this proceeding should be treated as if it were  
11 administrative agency's proceeding as opposed to a  
12 court proceeding and cites cases from administrative  
13 hearings where the Court has allowed relaxed  
14 evidence, you know, similar to know an ALJ asylum  
15 case or something like that. That is not, under the  
16 law of Wisconsin, the appropriate evidentiary  
17 standard for this case.

18 We filed a motion in limine and we  
19 therefore object to the admission of the documents  
20 that OCI listed at the beginning of this morning. We  
21 would object to their admission into evidence based  
22 on the matters raised in our brief this morning and  
23 my comments this morning and others may also wish to  
24 be heard. The disclosure statement I would note that  
25 was filed in October has many disclaimers which

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1 undercut its authenticity and credibility. The  
2 disclosure statement on October 8, 2010 filed by OCI  
3 begins with two full pages of disclaimers expressly  
4 disclaiming reliance upon the document. It stated  
5 that, quote, "This disclosure statement may not be  
6 relied upon for any purpose other than to obtain  
7 information about the Plan and the proceeding  
8 generally. Nothing contained herein will constitute  
9 an admission of any fact or of any liability by any  
10 party with regard to any claim or litigation,  
11 including but not limited to any proceeding involving  
12 the Rehabilitator, the Segregated Account, or any  
13 other party or any proceeding with respect to any  
14 legal effect of the rehabilitation of the Segregated  
15 Account or the transactions contemplated by the Plan  
16 in this disclosure statement."

17 OCI refused to stand behind any of the  
18 statements it made in the disclosure filed when it  
19 filed that brief. It recited, quote, "None of AAC,  
20 the General Account, the Segregated Account, or the  
21 Rehabilitator makes any warranty, express or implied,  
22 as to the accuracy or completeness of the information  
23 contained herein. In particular, events and forces  
24 beyond the control of the Rehabilitator may alter the  
25 assumptions upon which the disclosures in the

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1 disclosure statement are based." This is at Page 2  
2 of the brief that I just filed.

3 It also disclaims any predictive  
4 statements in the disclosure statement.

5 Now, after receiving the disclosure  
6 statement and the Plan of rehabilitation, interested  
7 parties in the proceeding requested time to analyze  
8 the Plan and a limited opportunity to obtain  
9 discovery into the Plan and related materials. That  
10 was argument we made in front of Your Honor on  
11 October 14th. OCI opposed those requests, and the  
12 Court agreed with OCI. Thus the parties in this  
13 proceeding have received only the documents that OCI  
14 has chosen to release and have had no meaningful  
15 opportunity to discover the bases for those  
16 materials or to examine OCI or witnesses about  
17 information that may be inconsistent with the views  
18 that OCI's expressed in these unverified unsworn  
19 statements. OCI has continued to release  
20 information -- and this is perhaps the most  
21 important, Your Honor. Your Honor held, I believe on  
22 October 25th, I believe is Your Honor's order, that  
23 the foundation for approval of the Plan is  
24 demonstration that the Plan provides at least a  
25 liquidation value for the policyholders affected.

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1 **The very first liquidation -- supposed liquidation**  
2 **analysis that we have ever received in this case was**  
3 **after close of business on Friday. Not even a**  
4 **business day before this hearing was to begin at**  
5 **9:00 a.m. in which OCI purports, without identifying**  
6 **who calculated it, how it was calculated, upon what**  
7 **document, or any opportunity for any interested**  
8 **parties to test that information, now will -- is**  
9 **trying to put a liquidation figure into the record as**  
10 **evidence before a single witness has taken the stand.**

11 **If OCI can lay a foundation for it, a**  
12 **proper evidentiary foundation, subject to**  
13 **cross-examination, at that point we can visit whether**  
14 **or not to admit it into evidence. It is**  
15 **inappropriate and against the rules of Wisconsin to**  
16 **allow that to come into evidence at this.**

17 THE COURT: Well, Mr. Van Sicklen, your  
18 offer was that these come in to the record, weren't  
19 they?

20 MR. DEVORE: Your Honor, other parties  
21 would like be heard on this issue.

22 THE COURT: He hasn't finished, but I'm  
23 taking his point to Mr. Van Sicklen. Wasn't that  
24 your offer on these documents, that they be received  
25 into the record of the hearing and how they're used

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1 during the hearing will be developed?  
2 MR. VAN SICKLEN: Well, it's -- and  
3 we're actually moving them in to the extent -- I  
4 mean, I have a full set of remarks to make. I don't  
5 know if it would be appropriate to do it now or if  
6 you want to hear --  
7 MR. GREENWALD: I haven't finished my  
8 remarks.  
9 THE COURT: Let me address my --  
10 MR. VAN SICKLEN: We're asking you to  
11 consider them part of the record for all purposes for  
12 you to consider. They would be part of the record  
13 going up on appeal in support of the Plan and that --  
14 I do have -- I mean, basically this is another effort  
15 to filibuster the proceeding and rediscussing the  
16 discovery motions they've previously lost. For them  
17 to argue that the first they've ever heard that this  
18 Court considers this to be a nonadjudicative,  
19 informal proceeding is very surprising.  
20 MR. GREENWALD: Your Honor, let me ask  
21 for proper -- if I could finish my remarks and  
22 then --  
23 THE COURT: All right. Go ahead. I  
24 wanted -- And I got your answer. They're offered  
25 into the record and if I receive them into the record

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1 not necessarily in evidence. Then we'll see how  
2 they're used. But if I receive them into the record,  
3 the record goes up. So proceed.  
4 MR. GREENWALD: Okay. Your Honor, as we  
5 outline in our brief with case authority and  
6 statutory authority, the Court lacks authority to  
7 ignore the rules of evidence in this proceeding. The  
8 rules of evidence are broadly applicable and, quote,  
9 "Govern proceedings in the courts of the State of  
10 Wisconsin except as provided in Sections 911.01 and  
11 972.11, neither of which apply here. Those regard,  
12 you know, the point here being that where the  
13 legislature wants to allow a court to relax the rules  
14 of evidence, it knows how to do so expressly and it  
15 has not done so in this case.  
16 The cases cited by OCI all relate to  
17 administrative proceedings, not court proceedings.  
18 Your Honor has ruled this is not adversarial but has  
19 not ruled has not rules this not a court proceeding  
20 for obvious reasons. It is a court proceeding.  
21 We cite a number of cases from OCI's  
22 brief which we believe they have misstated, all of  
23 which relate to administrative type proceedings, not  
24 to court proceedings. And OCI's argument that the  
25 Court has broad discretion regarding the admission of

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1 evidence, that it would somehow permit a Court to  
2 ignore the rules of evidence is groundless. Even the  
3 case that OCI cites in of Haggerty vs. Beshane  
4 (phonetic) recognizes that the Court's discretion  
5 regarding the admission of evidence does not extend  
6 to simply ignoring rules of evidence.  
7 The Court should not admit the  
8 disclosure statement or related documents unless OCI  
9 complies with the requirements of the rules of  
10 evidence.  
11 THE COURT: Aren't they documents  
12 created in the normal and ordinary course of the  
13 business of an agency?  
14 MR. GREENWALD: Hearsay within hearsay,  
15 Your Honor. The document itself may be authentic as  
16 submitted by an agency; the information and  
17 representations offered for the truth of the matter  
18 asserted therein are hearsay within hearsay that  
19 separate foundation. And they have not done so.  
20 If they have Mr. Peterson take the stand  
21 and testify that he prepared or was directly involved  
22 in preparing the liquidation analysis, for example,  
23 and he can identify the information that lays the  
24 foundation and is subject to cross-examination,  
25 that's the time to move the document into evidence

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1 and to judge whether they laid the foundation.  
2 THE COURT: Well, I'm beginning to think  
3 we're spinning wheels here, because I would assume  
4 that's what's going to happen.  
5 MR. GREENWALD: I don't believe so.  
6 THE COURT: I'm assuming that this is  
7 the record that is offered, how it's used, and then  
8 any motions on these issues I'll hear at the end of  
9 the case as to whether or not the Court is to accept  
10 it.  
11 But at this point these are the  
12 documents that have been generated by the agency.  
13 How those are used, we'll see at the hearing.  
14 They're certainly going to be in as part of the  
15 record; whether they are ultimately evidence if  
16 they're moved in that fashion, I have to wait until I  
17 have that happen. And I can't preemptively rule  
18 because I don't know what the witnesses are going to  
19 say.  
20 MR. GREENWALD: Your Honor, our position  
21 is that if OCI's moving for their admission at this  
22 time, that would inappropriate. I agree with you  
23 after testimony if they want to move it into  
24 evidence, at that time we can address the issue,  
25 after we have the evidence -- the testimony. I

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1 agree.

2 THE COURT: I thought the move was that  
3 they made part of record of this proceeding. I  
4 didn't know the motion was that they be considered  
5 evidence.

6 MR. GREENWALD: If OCI -- I believe OCI  
7 moved them into evidence this morning.

8 THE COURT: Well, all right, let me ask  
9 that. Is your motion to move the records -- and I  
10 assume the records are in those two boxes that are  
11 sitting over here?

12 MR. VAN SICKLEN: Yes, Your Honor. And  
13 I if I could be heard on it or if Mr. Greenwald is  
14 done.

15 MR. GREENWALD: No. I would make only  
16 one other comment.

17 THE COURT: Just answer my question.  
18 Are you moving them into evidence at this point  
19 before the proceeding or are you moving them into the  
20 record?

21 MR. VAN SICKLEN: Both, Your Honor. And  
22 I'd be happy to be heard when Mr. Greenwald is done.

23 MR. GREENWALD: I would have one more  
24 comment, Your Honor, and then I know that there are  
25 other parties that wish to speak from the objectors'

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1 side of this issue. It probably make sense to have  
2 them be heard. I don't want to tramp on their rights  
3 to be heard on the same issue. Others have joined  
4 with us since they've read this brief.

5 One thing I would call to the Court's  
6 attention is that 645.33 of Wisconsin Statutes  
7 specifically refers to or defines a rehabilitation  
8 proceeding as a formal proceeding which supports the  
9 fact that the rules of evidence apply. And so with  
10 that I guess I would cede the microphone to any other  
11 of the objectors who would wish to speak to this with  
12 Your Honor's --

13 THE COURT: Well, what we'll do instead  
14 is we'll take the morning recess. We're running  
15 quite long, and I'm sure the reporter needs a rest  
16 after solid statements. So we'll take a 15-minute  
17 recess, and then we'll hear the arguments when we  
18 come back.

19 (Recess.)

20 (End of Reporter Weisling's  
21 segment.)

22 (The following proceedings  
23 reported by Jennifer Poirior.)

24 (On the record at 11:09 a.m.)

25 THE COURT: Let's call the Circuit Court

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1 for Dane County back into session. Our matter is  
2 10 CV 1576.

3 I believe, Mr. Greenwald, you were --  
4 Yes. You moved out for --

5 MR. GREENWALD: Your Honor, I had ceded  
6 my place to other objectors.

7 THE COURT: We do have a handheld mic  
8 that can be made available to people. I am assuming  
9 there are other objectors who want to make an  
10 argument. If you do, we can just give you the mic  
11 and you can speak into it where you are if that's  
12 more convenient. So if you want to use the handheld  
13 mic, raise your hand and then the court officer will  
14 get that to you.

15 Start, please, by stating your name.

16 MR. DEVORE: Good morning, your Honor.  
17 Andrew Devore from Ropes & Gray, again representing  
18 One State Street, LLC.

19 As your Honor may remember, One State  
20 Street is the landlord for Ambac in its headquarters  
21 in New York City. To start, I'd like to join  
22 Mr. Greenwald's argument that he placed on the record  
23 at this hearing and his brief which was filed  
24 recently regarding the evidentiary issues with one  
25 exception, which I will address.

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1 At the outset, your Honor, One State  
2 Street objects to these filings submitted on Friday,  
3 the eve of this confirmation hearing, on several  
4 procedural grounds. The first basis -- The first  
5 item I'd like to address is a document termed  
6 Amendment Number Two to Disclosure Statement  
7 Accompanying the Plan of Rehabilitation which was  
8 served at the close of business this past Friday. We  
9 object to the introduction of the document into  
10 evidence or the record, especially the Liquidation  
11 Analysis, and giving it any evidentiary weight for  
12 several reasons.

13 First, simple due process and  
14 fundamental notions of fairness. This Court set  
15 October 21st as a date for OCI to file its brief in  
16 support of confirmation. OCI knew that it would have  
17 to address liquidation. OCI expressly acknowledged  
18 in its brief that the objectors asserted that the  
19 Carpenter case mandates a minimum recovery of a  
20 claims liquidation value. Despite acknowledging this  
21 factual issue, OCI did not provide any Liquidation  
22 Analysis until this past Friday after the close of  
23 business.

24 Now Mr. Van Sicklen addressed these  
25 types of last-minute filings in the hearing before

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1 this Court on June 9th, and I'll just briefly read  
2 from the transcript because I believe that argument  
3 is equally applicable here. "To drop a 365-page  
4 affidavit the afternoon before the hearing is unfair,  
5 prejudicial, and it's nothing more than a bald  
6 attempt to promote trial or hearing by ambush. They  
7 don't seriously think that either we or you would  
8 have an opportunity to review or submit opposing  
9 materials or make meaningful argument about it. It's  
10 simply a bald attempt to build an appeal record in a  
11 way that's directly and unfairly prejudicial to the  
12 respondents, OCI, and the company."

13 Now the very same argument that Mr. Van  
14 Sicklen raised on June 9th applies to these  
15 materials, specifically the Liquidation Analysis.  
16 One State Street and, I submit, the other objectors  
17 have had no meaningful time to assess the purported  
18 Liquidation Analysis or the vast number of  
19 assumptions that underlie the analysis.

20 Second, judicial estoppel. In this  
21 late-filed amendment, the Rehabilitator takes a  
22 position directly contrary to Mr. Van Sicklen's  
23 statements made on the record at a hearing this Court  
24 held on September 9th at that hearing on One State  
25 Street's objection to the temporary injunction. Now,

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1 this Court found in favor of OCI after that hearing,  
2 and OCI cannot now change the position that it  
3 advocated in order to prevail there. We have set  
4 forth the argument for judicial estoppel in our  
5 brief, and I won't repeat it here other than to say  
6 that the entire Liquidation Analysis set forth on  
7 Friday should not be admitted. Further, and this is  
8 where I will depart from Mr. Greenwald's argument, is  
9 that it should be entirely stricken from the record.

10 Second issue I'd like to address is,  
11 generally, the evidentiary standards. Again in a  
12 brief filed on the eve of this hearing, OCI requested  
13 the Court ignore the rules of evidence. In this  
14 request OCI suggests that the proceeding is simply an  
15 administrative proceeding. It is not. This  
16 proceeding is no different than any other court  
17 challenge to agency action, whether it be by  
18 declaratory judgment or otherwise. The objections to  
19 the Plan are challenges to agency action. In such  
20 proceedings, as Mr. Greenwald cited to, the rules of  
21 evidence apply.

22 This is not a situation where OCI  
23 determined to have -- decided to have administrative  
24 proceedings, perhaps, with its staff presenting facts  
25 to the Commissioner and the ability of interested

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1 parties to object and explain contrary positions.  
2 These are administrative proceedings where rules of  
3 evidence are relaxed.

4 Instead, OCI has chosen in this case to  
5 act on its own without warning to creditors and  
6 immediately, in *ex parte*, sought to have all legal  
7 and factual objections channeled to this Court. This  
8 is a court proceeding and the rules of evidence  
9 should apply. Just as if the agency had engaged in a  
10 rule-making action, the parties then filed a lawsuit  
11 to challenge the legality of that agency action.

12 Now, I'd like to turn to the Disclosure  
13 Statement and the supplement more generally. It  
14 appears that OCI is now offering these in evidence in  
15 addition to just being part of the record. As  
16 Mr. Greenwald alluded to, the entirety of the  
17 Disclosure Statement, including the supplement filed  
18 on the eve of this hearing, are not supported by any  
19 affidavit based on personal knowledge of the  
20 purported facts and analyses contained therein. One  
21 State Street respectfully moves that the entirety of  
22 the Disclosure Statement, the supplement to the  
23 Disclosure Statement filed on the eve of this  
24 hearing, as well as the objection to the question --  
25 as well as the question and answers that were

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1 submitted on the eve of this hearing, be stricken  
2 from the record.

3 Now I'd like to make one clarification.  
4 Mr. Van Sicklen referenced a stipulation regarding  
5 the admissibility of the Disclosure Statement and  
6 other materials that was entered into with Depfa.  
7 I'd just like to make the record clear that that  
8 stipulation was only entered by Depfa, and the other  
9 objectors, particularly One State Street, did not  
10 enter into that stipulation.

11 THE COURT: Next? Are you done?

12 MR. DEVORE: Just for the record, I  
13 would like to renew our objection that this  
14 proceeding is proceeding without formal discovery. I  
15 just want to state that for the record. Thank you.

16 THE COURT: All right. Next objector  
17 who wants to be heard? Apparently only one then.  
18 All right. No one else has indicated a desire to be  
19 heard.

20 All right. Proceed, Mr. Greenwald. Had  
21 you finished now?

22 MR. GREENWALD: Yes, your Honor.

23 THE COURT: All right. Mr. Van Sicklen,  
24 response?

25 MR. VAN SICKLEN: Yes, please. Thank

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1 you, your Honor.

2 There's been a lot of points mentioned,  
3 so I'm going to try to respond to them in a direct  
4 way. We do believe that it's important and, really,  
5 a fundamental pivot point for the Court this morning  
6 to decide the type of proceeding this is and whether  
7 this information should come in and be in the record  
8 and in evidence for purposes of such consideration as  
9 you deem appropriate to give it.

10 It's not being offered for the truth of  
11 the statements. All these different objecting  
12 parties can argue and challenge and ask questions of  
13 the witnesses about anything in there. It really  
14 goes to the weight that you accord it. We believe  
15 these are properly business records and part of the  
16 agency submissions. And again, we're making it  
17 available in excess of what's actually required by  
18 645.33(5), which indicates, in regard to Plan  
19 confirmations, there's no requirement that we provide  
20 any type of information. We've gone light-years  
21 beyond that in providing information. And again,  
22 what -- this is really, in a lot of ways, a replay of  
23 the arguments we've heard and reheard again and again  
24 in this proceeding about people wanting discovery.  
25 They didn't like the schedule that you set in regard

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1 to confirmation.

2 What Mr. Greenwald is asking you to do  
3 -- and again, Mr. Greenwald and his clients are  
4 people that have, pursuant to the Court of Appeals  
5 decision, no further interest in this proceeding and  
6 nothing further to do in this Court, and yet what  
7 they're really asking you to do is to force OCI to  
8 put on every member of OCI, every member of the  
9 financial advisor team and lawyers who had input into  
10 this vast amount of information that we've put out  
11 there starting in March for people to consider.  
12 We're not offering it again, each statement, for the  
13 truth. But what they're asking you to require us to  
14 do is to go statement by statement through all of  
15 this weight of authority and indicate whether it's  
16 hearsay within hearsay -- use Mr. Greenwald's term --  
17 or personally prepared by this particular advisor or  
18 by that particular, you know, financial advisor or  
19 member of OCI, and that's not what's required by  
20 645.33.

21 Mr. Greenwald says well, it expressly  
22 says it's formal. It really doesn't actually say  
23 that. It says, in fact, and I'm quoting from the  
24 legislative comments to this very Plan provision, and  
25 you've quoted it before in your July 17th decision,

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1 that (quoted as read) "this whole Plan process is  
2 designed to make rehabilitation a very flexible  
3 procedure. It's essential that it be regarded as a  
4 management rather than a legal task. Though it's  
5 called a formal proceeding because it begins with a  
6 formal petition to the court, thereafter, it should  
7 be essentially informal in operation. The order is  
8 formulated to emphasize flexibility and informality,  
9 and that, of course -- but the Court's control should  
10 be liberal, not strict, and should not be provided --  
11 not be interposed any kind of cumbersome procedures."

12 And that's the spirit with which we've  
13 proceeded, whether it's in the bank settlement or the  
14 Weinstein settlement or the, you know, J.P. Morgan  
15 settlement. All the prior matters have proceeded  
16 with the Court's encouragement and everybody else's  
17 acquiescence by written submissions and affidavits  
18 and the like, very much like what we've done here.  
19 And we entered into, at the request of most of the  
20 other objectors other than Mr. Greenwald and the  
21 landlord whose counsel just spoke, these stipulations  
22 regarding the witnesses so they could not be burdened  
23 by coming and we'd put in their affidavits. And I  
24 read you the *quid pro quo* that we've relied upon that  
25 our materials would also go in and it would go to

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1 weight.

2 You're an expert. You've handled  
3 decades of these types of proceedings, and it's the  
4 agency's best efforts, through its advisors and a  
5 coordinated team to put this information in, and if  
6 we embark on this path that they're asking you to buy  
7 into, as nonparties who claim to the Court of Appeals  
8 they have no further interest in this case here, to  
9 go line by line through all of these, we'll be here  
10 for months, and that's not appropriate.

11 They can cross-examine the witnesses  
12 about any particular statement. They complain that  
13 somehow the Liquidation Analysis has never been  
14 mentioned. Well, a couple notes. In our original  
15 Disclosure Statement back at the beginning of  
16 October, there's a section on Liquidation Analysis,  
17 page eight to nine. It's laid out. In response to  
18 some of these objections, we tried to again give them  
19 a more detailed amplification, but it's the same  
20 structure, same types of information. It's just  
21 developed more particularly. And in any event, as  
22 indicated -- and we filed all this stuff in  
23 compliance with the scheduling order, which they've  
24 appealed. It's already on appeal. They don't like  
25 the prompt schedule. They want discovery first, et

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1 cetera. But this issue goes to the heart of whether  
2 we're gonna be here for a couple days or a couple  
3 months, and I submit, respectfully, that you, as the  
4 trier of fact, can give this information such, you  
5 know, little or great weight as you deem appropriate.  
6 We're making it fully available for  
7 cross-examination and questioning. If they wish to  
8 put in any Liquidation Analysis or question ours, you  
9 know, they can go to it, but they haven't so far.  
10 And, you know, I would submit and make a proffer  
11 again that this should be admitted within your  
12 discretion for such weight as you deem appropriate as  
13 the agency's records.  
14 And all we're offering it for is to show  
15 the thoughtfulness and rational basis for OCI's  
16 decisions. People can question any particular  
17 statement that we've given them, and you can decide  
18 whether you think the information is reasonable,  
19 should be given weight or not. But to embark on  
20 line-by-line argument about it, we'll be here  
21 forever, your Honor, and I don't think that's in  
22 keeping with the spirit of what the statutes require,  
23 which don't even require us to put any of this  
24 written information in or any kind of witnesses.  
25 But we're not here doing this in secret.

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1 We've given everybody our basis for believing the  
2 Plan's fair and equitable. We've tried to react in  
3 the brisk schedule that you've set. And there's pros  
4 and cons. Yeah, in a perfect world we would have  
5 allowed a leisurely, you know, years or months of  
6 scheduling. But as we discussed at great length with  
7 you before in the scheduling motion that was  
8 contested by Mr. Greenwald and the others, there's  
9 trade-offs.  
10 We have hundreds and thousands of  
11 interested parties who are concerned about the  
12 payment moratorium that's going on, and so we did  
13 have an abbreviated, tight schedule. But the Plan  
14 we've put forth is very much like the Plan we  
15 outlined, same cash note split back in March of this  
16 year.  
17 And we've put information out there as  
18 quickly and as responsibly as we possibly could, and  
19 so I would again move that, you know, the information  
20 I've outlined be admitted for both purposes, the  
21 record and as evidence, and you give it what weight  
22 you wish. And if, after hearing the witnesses, you  
23 have some reservations about some part of it, we can  
24 take it up at that time. But to do it the other way  
25 around, to require us to go through first, we're

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1 going to be here line by line, we'll have to call --  
2 probably adjourn the proceeding to give people time  
3 to deal with the fact that we would have to put in  
4 individual financial advisors that OCI has engaged  
5 and counsel that were all part of formulating this  
6 vast body of information, and that's, I respectfully  
7 submit, not what's called for.  
8 And we're not offering it for the truth.  
9 We're offering it as a business record to show the  
10 rational basis and it goes purely to your discretion  
11 as to what weight, if any, to accord it. Thank you.  
12 THE COURT: All right. I agree. I  
13 think this would be certainly receivable into the  
14 record and into evidence for the purposes that it's  
15 being offered. Under 902, the Court can take  
16 judicial notice of its own records and its own files,  
17 and these are all part of those, and it is something  
18 that all of you are relying on. The records that are  
19 prepared here under the exception to the hearsay  
20 rule, a firmly rooted exception is public records and  
21 reports, and these types of business records that are  
22 created under -- this is under -- 908.03(8) covers  
23 that, and that's what these are. They are the  
24 records that were required to be prepared and  
25 submitted to this Court by the OCI. They have done

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1 that.  
2 The objections I'm hearing go to the  
3 niceties of the various parts of the report. Whether  
4 it's hearsay within hearsay, as long as it's a firmly  
5 rooted exception of the Wisconsin hearsay law as it  
6 would be for public records, I believe it would be  
7 admissible.  
8 And the bottom line is it still is a  
9 weight issue in terms of the approval of the Plan.  
10 The Court has to look at what weight is it to be  
11 accorded to the evidence when compared to other  
12 evidence. In many respects we're pre-arguing the --  
13 This is what I would have expected to have heard on  
14 the completion of the hearing regarding the  
15 admissibility of these documents. Then it would be  
16 more specific having had it presented.  
17 But for now, for the purposes of this  
18 proceeding as we go forward, I think under those two  
19 rules, the Court can receive it into evidence, and  
20 what weight it is to be given I will determine at the  
21 time that I will rule on whether to approve or  
22 disapprove the Plan or modify if there are  
23 modifications to be made.  
24 Now, regarding whether or not the Court  
25 has jurisdiction -- and I realize that there have

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1 been a number of forays into the Court of Appeals on  
2 various issues -- it is now -- maybe it's an attempt  
3 to correct an oversight. I would have thought this  
4 issue of whether or not this Court has jurisdiction  
5 to hear this case, because there has been appeal on  
6 the issue of whether or not the Plan or the  
7 Segregated Account was properly constituted, was  
8 legal. I thought that would have probably been an  
9 earlier motion for stay until they could decide that.

10 Well, you can't do that in appellate  
11 court until they have a determination down here and  
12 it has to be referred to the Court. Now at the start  
13 of the proceeding we get this dropped -- I spent all  
14 weekend and most of last week preparing for this, and  
15 that was not one issue, and it came in this morning.  
16 And maybe that's a problem when we lock our  
17 courthouse up over the weekend, we don't have access  
18 to these things flowing in.

19 But we now have, I think, an attempt to  
20 correct that it appears, and I think still this Court  
21 has certainly the authority and right to proceed and  
22 take the evidence. And this week we'll give you  
23 folks the opportunity, if you want to bounce this up  
24 to the Court of Appeals, you can do that seeking an  
25 interlocutory appeal. But I don't think that stays

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1 the Court's ability to take the evidence.

2 I'm also satisfied at this point that  
3 the appeal of that doesn't stop the Court from going  
4 forward, doesn't take the jurisdiction away. I guess  
5 you folks, if you believe that there's other law out  
6 there than what's been presented here that says  
7 otherwise, go to the Court of Appeals -- you  
8 certainly have got the capacity to do that -- and go  
9 up and make your formal request.

10 Now I've just given you a ruling on your  
11 bringing this issue for a stay back to the Court, and  
12 I'm telling you that I will be denying that, that  
13 request to stay the proceeding for lack of  
14 jurisdiction, a finding I do have it. Now you can  
15 take that issue up, and I'm sure we'll get an answer  
16 in the next day or so. And if they come in and say  
17 we want to -- we're gonna stay this until we can  
18 review it, that's fine.

19 But at this point I'm finding I've got  
20 the jurisdiction, I'm finding that I can take the  
21 evidence, and then we'll see what the situation is by  
22 the time it comes to making the decision. That will  
23 give me further opportunity to review everything that  
24 was filed this morning. I certainly haven't had a  
25 full occasion to do that, but on the basis of what's

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1 presented, I believe that my ruling is appropriate.

2 So with that, are there any other  
3 pre-testimonial issues? If you want to know, I guess  
4 maybe there was an issue about the scope of the  
5 hearing, and I agree with OCI. This is a court  
6 proceeding. Rules of evidence will have their  
7 application. Under the procedure that I've just  
8 ruled on, the OCI records can come in. You've  
9 reached agreement the affidavits can be received. I  
10 am accepting your stipulation and can receive those.  
11 I'm accepting all of those stipulations as to that  
12 evidence or that series of documents that goes into  
13 the record.

14 I believe that this will be what I would  
15 consider a normal type of court proceeding. I'll  
16 hear the objections when they are raised, but  
17 preliminarily, I'm going to receive those records for  
18 the reasons I've stated. And if you've got other  
19 objections or other evidence you're going to  
20 introduce, you introduce it during your proceeding,  
21 and we will hear and rule on it at that time, and  
22 then ultimately I'll have it all before me and be  
23 able to weigh it as to its application to whether or  
24 not this Plan that's proposed should be approved.

25 And again I remind you, as I have

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1 throughout these proceedings, what the legislature  
2 appears to indicate to be its view of how this is to  
3 proceed, it's administrative, it's like a business  
4 decision making that the OCI is doing. It's stepping  
5 into the shoes of those folks. The Court is to be  
6 liberal, as has been argued, and I will intend to  
7 apply those particular rules.

8 I see that -- I don't see this as  
9 plaintiff-defendant bang bang, we go down the line  
10 with everybody's rights and rules and so forth.  
11 That's a different type of proceeding. This is a  
12 proceeding where the legislature has said hey, look  
13 at what this thing is, look at the nature of it, look  
14 what is happening, and do more managing and see that  
15 people get to be heard, the information gets in, and  
16 don't unduly restrict or prevent that. And I think  
17 that's the kind of approach I have to take and will  
18 take with what is going to now, I assume, be  
19 presented by way of evidence in support of and in  
20 opposition to the Plan.

21 All right. Any other of these pending  
22 motions? I don't know if I got them all.

23 MR. GREENWALD: Your Honor, there was  
24 one additional from RMBS that I listed, but I wanted  
25 to defer to other counsel first, because my matter

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1 will not take long.

2 MR. WELSH: Nor will mine, your Honor.

3 Tom Welsh on behalf of Depfa. In taking into

4 consideration the comments that you just made, I've

5 heeded them and I'll keep this very short. But I did

6 want to point out, as a preliminary matter, that

7 there is an independent standard that is going to

8 come into play here during the course of the hearing

9 independent of Chapter 645 that is now embedded in

10 the Plan and embedded in a proposed order that's been

11 presented to you, and that is, essentially, there is

12 a hearing within a hearing that will happen here.

13 Under the Plan, the basic structure

14 involves a trade of policyholders' claims under their

15 Ambac policies for a set of benefits that include a

16 surplus note. Now, that surplus note is a security,

17 and under the Securities Act of 1933, the issuance of

18 those securities to our clients either has to be

19 pursuant to a registration statement filed with the

20 SEC or it has to fall within one of the exceptions to

21 registration, and in the Plan, the Commissioner has

22 cited Section 3(a)(10) of the '33 Act as supporting

23 an exception such that the issuance of the surplus

24 notes can be accomplished without the filing of a

25 detailed registration statement.

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1 Now, that implicates standards under the

2 '33 Act as to how this hearing must be conducted, and

3 these are, of course, discussed and embedded in the

4 SEC No-Action Letter that the parties saw for the

5 first time on Friday after the close of business.

6 The SEC rule, in order for it to be

7 invoked properly, requires that you make two specific

8 findings. Actually, more than that. But one raises

9 this procedural issue that we've been talking about,

10 and there is a specific finding in the new

11 replacement form of order that is there at the

12 request of the SEC, presumably, that the process by

13 which this exchange will occur is not just

14 substantively fair, that there's a fair exchange of

15 value under the circumstances.

16 But also, you have to make a finding

17 that it is procedurally fair, that the process by

18 which we lead up to and confirm the Plan has all the

19 earmarks of procedural fairness to those parties who

20 are impacted by the Plan. And this extraordinary

21 rush to get this process done, which, candidly, my

22 client and most of the policyholders can't understand

23 because we don't have the traditional parade of

24 widows and orphans and injured workers who are

25 relying on benefits that are being delayed by a

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1 rehabilitation or a liquidation proceeding.

2 Here you have, essentially, investors

3 who are looking to Ambac to pay, and now they're not

4 and for some period of time payments are suspended.

5 But we're having a hard time understanding this

6 extraordinary rush to try to complete this process in

7 a way that really undermines this Court's ability to

8 make that essential finding that the process has been

9 procedurally fair to us, and we can highlight just

10 quickly a couple of things.

11 You've heard a couple of times that we

12 have seen for the first time some of OCI's most

13 important evidence Friday evening after the close of

14 business. Mr. Van Sicklen, when he was talking about

15 the Friday filings, he described them as a very

16 important part of OCI's case. We saw that for the

17 first time on Friday evening, and I suggest to you

18 that it's procedurally unfair to us not under the

19 much more flexible standards that are articulated in

20 the introductory notes to Chapter 645, but under the

21 standards that the SEC would apply in looking at

22 whether or not it's appropriate for the company to

23 rely on Section 3(a)(10) of the '33 Act.

24 Even today, during the preliminary

25 comments of Mr. Van Sicklen, we learned even more

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1 about significant changes that are happening that

2 will affect policyholders rights under the Plan and

3 the value of surplus notes. We've heard about the

4 settlement of the dispute with the Las Vegas Monorail

5 Bondholders Group, which Mr. Van Sicklen described as

6 the single largest current exposure within the

7 Segregated Account. Now, obviously, we don't know

8 the terms of that settlement yet because they still

9 have some work to do on it, but to start a

10 confirmation hearing and to start taking evidence on

11 the fairness of the Plan substantively when literally

12 on the day that the hearing commences we're getting

13 new evidence of material changes in the landscape, I

14 believe and Depfa believes, makes it impossible for

15 you to make the kind of procedural fairness finding

16 that you need to make in order to allow the company

17 to rely on Section 3(a)(10) of the '33 Act.

18 And obviously, another big recent change

19 was the fact that the parent company filed for

20 bankruptcy and the IRS came looking for the

21 \$700 million in tax refunds that were obtained by

22 Ambac in late 2009 and earlier this year. Now,

23 that's a potential -- collectively, those could be

24 liabilities to the Segregated Account of more than

25 \$700 million. Those were moved into the Segregated

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1 Account on Saturday or Sunday of last weekend. The  
2 parties didn't find out about that material change to  
3 the status of the Segregated Account until Monday  
4 after we had already filed our opposition papers.

5 That timeline, this artificially  
6 truncated timeline that the Commissioner and OCI have  
7 suggested to the Court, runs afoul of the kind of  
8 standards that the Court needs to look to in  
9 determining and finding that this proceeding has been  
10 the result of procedural fairness to the people who  
11 are impacted by this -- by this demand that they  
12 exchange their policy claims for securities.

13 You know, Mr. Van Sicklen has described  
14 a lot of what we've said as attempts to filibuster  
15 this proceeding and bring it to a standstill, and I  
16 have to go back to the very first brief that my  
17 client filed. And in a footnote in the Introduction,  
18 we had to come right out and acknowledge that  
19 Depfa -- you know, if, in fact, it's correct that the  
20 Segregated Account wasn't properly capitalized,  
21 wasn't legally set up, and was an abusive of the  
22 rehabilitation process, we recognize that actually,  
23 that could be harmful to Depfa's economic interests.  
24 It may be that the end result of a process that isn't  
25 consistent with Wisconsin law may be better than a

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1 liquidation alternative. But we have so little  
2 visibility into what's going on that they're willing  
3 to take that risk and ask the Court and ask the  
4 Commissioner to bring the proceedings into compliance  
5 with Wisconsin law even though it may cost them money  
6 in the end. And we have to ask why.

7 It's not because we want to filibuster.

8 It's because the one thing that all of these  
9 investors want is some degree of certainty. Is there  
10 any value in these policies, or not? Because many of  
11 them are publicly traded companies that have to book  
12 these into their financials -- their audited  
13 financial statements. And we all want, above all  
14 else, some degree of certainty, and we don't believe  
15 that this process, this rush to just get this thing  
16 done by yearend, whatever is driving that, whether  
17 it's the change in political administrations or not  
18 we don't know, but it doesn't give us the one thing  
19 that we want, which is certainty. And continuing  
20 with this process, continuing with this hearing and,  
21 you know, getting to the point where all we've  
22 achieved is an order approving a Rehabilitation Plan  
23 or confirming a Rehabilitation Plan and a bunch of  
24 appeals that will last for a while doesn't get us  
25 there.

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1 We suggest that a better way to get  
2 there is to let the Court of Appeals make its  
3 determinations, and we'd be happy to work with the  
4 Court of Appeals to expedite this. But to deal with  
5 these threshold issues first, the procedural fairness  
6 that gave rise to the creation of the Segregated  
7 Account, the rehabilitation of the Segregated  
8 Account, and now this Plan, those threshold issues  
9 really, if resolved in favor of the policyholders,  
10 makes this continuing uncertainty severely  
11 detrimental to the policyholders. We would prefer a  
12 process that proceeds with a degree of care and  
13 consideration that we believe is lacking right now.

14 Thank you very much for hearing this.

15 THE COURT: There was a gentleman --  
16 Somebody moved up here.

17 MR. GREENWALD: Yes. There's one -- a  
18 couple more people that want to speak.

19 MR. WHITMER: Your Honor, I am just  
20 bringing a housekeeping matter before the Court  
21 Mr. Van Sicklen and I discussed at the break. On  
22 November 9th, we filed a motion with the court asking  
23 for leave to file our objections one day late. Due  
24 to a technical problem with counsel's email, our  
25 local attorney, or one of the local attorneys was a

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1 few minutes late to the courthouse and, therefore,  
2 the objections didn't get filed until the following  
3 morning. We brought this to the attention of OCI,  
4 its counsel. The objections were served on all  
5 counsel on November 8th, the day they were due, and  
6 OCI has stated they have no objection to this motion.

7 I don't think your Honor's ruled on it  
8 yet, and we just would like to close the loop on  
9 this, and we ask that the Court grant the motion  
10 allowing Wells Fargo, as Trustee for the LVM  
11 Bondholders, to have its November 9th filings deemed  
12 filed timely.

13 THE COURT: There is no objection on  
14 that.

15 MR. VAN SICKLEN: Your Honor, there was  
16 more than one of the late filings for different  
17 reasons, and we've cooperated with all those  
18 different parties saying, in keeping with the  
19 informal nature of these proceedings, we had no  
20 objection.

21 THE COURT: And that's something I have  
22 on my list in going through the filings for today's  
23 proceeding, that that's there, and I've got it  
24 setting on my desk, and I was going to be asking if  
25 there was any objection. So I'll go ahead and sign

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1 the order and send it in.  
2 MR. WHITMER: Thank you, your Honor.  
3 THE COURT: All right. Next.  
4 MR. VAN SICKLEN: Would it be useful to  
5 respond to the different arguments quickly? I think  
6 Mr. Bloomgarden has quite a different point than  
7 Mr. Welsh's.  
8 THE COURT: Go ahead then.  
9 MR. VAN SICKLEN: Okay. I won't belabor  
10 it. Mr. Welsh and his client were -- joined the  
11 effort in front of the Court of Appeals last week to  
12 stay this proceeding, making very many of the same  
13 arguments. They filed a letter brief, and so I  
14 assume he was really kind of issuing what we agreed  
15 not to do, which would be oral argument on the  
16 merits, because his position for a stay was denied  
17 last week by the Court of Appeals.  
18 I would also note that the Commissioner,  
19 under the Securities Act, it expressly permits a  
20 finding of, you know, procedural fairness by the  
21 State Insurance Commissioner, which is something  
22 we'll get to in our closing argument when we get to  
23 it. So I think his point is misplaced on that, and  
24 this is just rearguing the whole concerns they've had  
25 in the past about the scheduling order being too

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1 brief.  
2 What he wants is, he says, is certainty,  
3 and that at the heart of our Plan is really not  
4 certainty because it's not a certain future. We have  
5 a flexible process that calls for annual reviews and  
6 adjustments and reports, and alternative dispute  
7 resolutions like we have with the LVMs are part of  
8 the Plan going forward. We'll get on the record  
9 later, assuming we document everything on the LVM,  
10 but it's consistent with all the prior approvals. It  
11 creates surplus for the benefit of the Segregated  
12 Account Policyholders in that it improves the  
13 treatment, from our point of view, of what we  
14 otherwise, under the Plan, would have to pay to the  
15 bondholders.  
16 So it creates a value to the remaining  
17 people, and that's the test that we've had throughout  
18 in all of the settlements, and you'll see that what  
19 we're bringing forth is consistent with that. So  
20 it's not some startling new development. We've had  
21 in the past, you know, alternative resolutions, and  
22 our Plan expressly contemplates that we're going to  
23 continue to do that, and we're always going to bring  
24 them to this Court, as the arbiter, that it's fair  
25 and within the constraints of being better for the

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1 Segregated Account Policyholders than the Plan would  
2 be in terms of the settling party. So these aren't  
3 startling new developments in that sense, and  
4 Mr. Welsh had his opportunity to get a stay last week  
5 and didn't get it.  
6 THE COURT: All right. State your name,  
7 please, for the reporter.  
8 MR. BLOOMGARDEN: Yes. Thank you, your  
9 Honor. Good morning again. Craig Bloomgarden on  
10 behalf of the Federal Home Loan Mortgage Corporation,  
11 also known as Freddie Mac.  
12 I wanted to just bring to the Court's  
13 attention a potential scheduling issue. When I say  
14 potential, occasioned by the Rehabilitator's late  
15 filing of its Liquidation Value Analysis after the  
16 close of business Friday afternoon that your Honor's  
17 already heard about. Freddie Mac filed its  
18 objections last Monday along with a number of --  
19 about 15 other parties, and we raised five specific  
20 objections to the Plan, the respects in which we  
21 believe the Plan's unfair, unequitable, and unlawful.  
22 And one of those objections was that the Plan was not  
23 supported by the statutorily and constitutionally  
24 required analysis of whether policyholders will  
25 receive at least the liquidation value of its

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1 claims -- of their claims, which your Honor indicated  
2 in your October 26th decision was required by the  
3 Wisconsin Statute and also by the Carpenter decisions  
4 constitutionally required by those decisions, and we  
5 also indicated that the Plan fails to provide  
6 policyholders with a liquidation value opt-out  
7 option.  
8 A number of other parties raised the  
9 same objections, including the RMBS Policyholders, in  
10 whose objections Freddie Mac fully joins to the  
11 extent that we didn't raise them ourselves.  
12 Now, an apparent recognition of these  
13 objections that the Plan was not supported by the  
14 required Liquidation Value Analysis, the  
15 Rehabilitator, for the first time, after the close of  
16 business on Friday, presented such an analysis in its  
17 Amendment No. 2 to the Disclosure Statement. This is  
18 something, your Honor, that should have been  
19 submitted with their original Disclosure Statement  
20 back on October 8th. If it had been, we would have  
21 identified -- we and or others would have identified  
22 a witness specifically to address the flaws in the  
23 Liquidation Value Analysis, and there are many, both  
24 legally and factually.  
25 Mr. Van Sicklen referenced earlier today

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1 that they did say something about liquidation in  
2 their original disclosures, and he's right about  
3 that. But it had nothing to do with the Liquidation  
4 Value Analysis. All it did was say why they thought  
5 that rehabilitation of the Segregated Account was  
6 better than liquidation of the entire company, but  
7 they didn't do a Liquidation Value Analysis, which  
8 they were obligated to do.

9 As a result of the situation that has  
10 been created by the late filing of the -- of this  
11 Liquidation Value Analysis and without waiving any  
12 objections to the admissibility of this analysis in  
13 which objections Freddie Mac fully joins, Freddie and  
14 other objectors are discussing with our clients  
15 whether we need an additional witness to testify in  
16 this proceeding with respect to the flaws in the  
17 Liquidation Value Analysis.

18 We are going to try to have such a  
19 witness, should we feel one is necessary. And we may  
20 conclude one is not necessary depending on your  
21 Honor's ultimate evidentiary rulings and the  
22 testimony that comes out through the scheduled  
23 witnesses, but we will try to have such a witness, if  
24 we feel one is necessary, ready by the end of this  
25 week, but that may not be possible as a result of the

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1 OCI's late filing of this information, and to the  
2 extent that we cannot have somebody ready and to the  
3 extent that the proceeding should otherwise conclude  
4 before the end of the week, we will be asking your  
5 Honor to adjourn it to the other reserve date, the  
6 next reserve date, November 29th, such that we can  
7 present to the Court this information should we  
8 determine that it is necessary.

9 So that's just a -- We will apprise the  
10 Court and the Rehabilitator where we stand on this  
11 issue as the week proceeds, but I just wanted to  
12 alert your Honor to this being a potential issue that  
13 we may need to address later in the week. Thank you.

14 THE COURT: All right. Mr. Van Sicklen,  
15 any --

16 MR. VAN SICKLEN: Yes. I just have one  
17 brief comment before we call a witness or take lunch.  
18 I want to clear the air on something about this  
19 Liquidation Analysis point Mr. Bloomgarden raised.

20 First off, our position, as set forth in  
21 our opening brief in support of confirmation and our  
22 reply brief, is that there is no Wisconsin statutory  
23 requirement of establishing a liquidation alternative  
24 test, nor is there a constitutional requirement. The  
25 Court picked up a parenthetical in one of Ambac's

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1 briefs in a footnote in, basically, just quoting the  
2 footnote. It's taken on a life of its own here ever  
3 since by the objecting parties seizing upon it. It's  
4 not this Court's holding, it's not some kind of  
5 independent position, and we disagree with it quite  
6 strenuously for the reasons we briefed.

7 It's on -- It's page 14 of the  
8 October 25th decision that you issued, your Honor,  
9 and all you did was quote the AAC footnote in which  
10 there's a parenthetical talking about a test from the  
11 California case called *Carpenter*. And so lest  
12 anybody has -- You know, I want to disabuse the Court  
13 or any of these objecting parties that we think that  
14 it's necessary for OCI to establish that liquidation  
15 would have been worse than the Plan is providing  
16 them. We think that we can easily do that, and we'll  
17 go through it.

18 The argument that somehow we sprung the  
19 Liquidation Analysis on them last week, again, is  
20 misguided, I believe. I respectfully submit we put  
21 in our opening Disclosure Statement, under a  
22 separately headed section of it, pages eight to nine,  
23 why OCI rejected back in March the alternative of  
24 doing a liquidation of Ambac, and the basic component  
25 key points of which are amplified for the sake of

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1 giving more information to parties in the more recent  
2 filing. But it's not a stunningly different  
3 approach. It just expands upon the core principles  
4 that are fully disclosed back when we did our  
5 original Disclosure Statement.

6 And in any event, we think that this is  
7 just a diversion that they're -- and I'll reserve it  
8 for our closing argument, but that's not a Wisconsin  
9 statutory test, it's not a constitutional test, and  
10 we respectfully submit it's a misreading of the  
11 California *Carpenter* case that requires it for the  
12 reasons we briefed. Thank you.

13 MR. BLOOMGARDEN: Your Honor, may I just  
14 be heard on that very briefly? I don't know how  
15 others feel about this, but it is personally  
16 offensive to me that we're being accused of pursuing  
17 diversionary tactics when all we are doing is  
18 insisting on statutorily and constitutionally  
19 mandated rights.

20 Your Honor got it right in your  
21 October 26th decision, and I'll read from your  
22 decision, your Honor. You said that "fair and  
23 equitable treatment in operation of the Segregated  
24 Account under Wisconsin Statutes Section 601.01(2)  
25 does not create a private right of action. Rather,

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1 it indicates that policyholders must receive at least  
2 the liquidation value of their claims from a Plan of  
3 Rehabilitation."

4 That's a -- That's statutorily required,  
5 as your Honor has found, under Wisconsin Statute  
6 601.01(2), and your Honor cited the California  
7 Carpenter decision, which was a Supreme Court of  
8 California decision in 1937 that is a bedrock  
9 principle of these proceedings and was affirmed in a  
10 written decision by the United States Supreme Court  
11 that discussed the constitutional reasons why  
12 liquidation value needs to be minimally provided.  
13 Otherwise, you have a constitutional impairment of  
14 contracts.

15 So this is a fundamental legal issue  
16 that your Honor is going to, as we believe, already  
17 ruled on, and the OCI completely dropped the ball on  
18 this until the very last minute on Friday afternoon  
19 when they put in, for the very first time, a  
20 Liquidation Value Analysis.

21 You can look at what they submitted.  
22 You can see it bears no resemblance to what they put  
23 into their original Disclosure Statement. It is a  
24 fundamentally flawed analysis, your Honor. We  
25 believe that the liquidation value would be

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1 substantially higher and that policyholders need to  
2 be offered that value as an option and can dissent  
3 out of this Plan in order to avoid a constitutional  
4 issue here.

5 And all we are saying, your Honor, is  
6 that if we are unable to have a witness ready because  
7 of the circumstances created solely by the  
8 Rehabilitator, that we should have an opportunity to  
9 bring a witness forward on the already reserved date  
10 of November 29th to address this record so that your  
11 Honor has the benefit of hearing the evidence and can  
12 be making an informed decision. Thank you.

13 THE COURT: All right. It's time to  
14 take the noon break. I believe we've completed the  
15 presentation now, so we can start with evidence this  
16 afternoon?

17 MR. GREENWALD: Your Honor, right after  
18 lunch, if we could just very briefly undertake the  
19 one -- the third issue that my clients had, which is  
20 the issue of their status as an interested party in  
21 this. I want to --

22 THE COURT: Haven't I already ruled on  
23 that?

24 MR. GREENWALD: You ruled that none of  
25 the interested parties in this case could intervene

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1 as parties, but that everyone shall be heard. My  
2 understanding is -- I just want to clarify -- I  
3 believe OCI agrees that we have the right to be heard  
4 in this hearing.

5 THE COURT: Well, I understood that.  
6 You've been heard for months now.

7 MR. GREENWALD: Right. I appreciate  
8 that. We've submitted -- We submitted a paper just  
9 laying -- providing some law why my clients have the  
10 right to be heard in this hearing as well as the SEC  
11 No-Action Letter which specifically relies on, I  
12 believe, a statement from counsel for OCI. It's  
13 conditioned on the statement -- it's the third bullet  
14 point of the November 12 No-Action Letter.

15 THE COURT: I don't know, did you  
16 present me with that?

17 MR. VAN SICKLEN: It's posted on the  
18 website, your Honor. I can give you a copy of the  
19 No-Action Letter.

20 THE COURT: If you have that, I would  
21 appreciate it, because I was looking for it.

22 MR. GREENWALD: Should we hold this over  
23 until after lunch? Your Honor, I don't want to delay  
24 the lunch break.

25 THE COURT: Well, I was assuming we were

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1 going to wrap this up rather quickly so we could come  
2 back and start with evidence.

3 MR. GREENWALD: Yes.

4 THE COURT: You're going to be heard.

5 MR. GREENWALD: Thank you, your Honor.  
6 And the one thing that I do want to correct, because  
7 it's been repeated on statement by OCI, is, your  
8 Honor, in September I sent a letter to the Court  
9 offering -- In April we filed an affidavit from  
10 Mr. Groper that swore that our group owned in excess  
11 of a billion dollars par value of Ambac-insured RMBS  
12 securities. So we have that on the record.

13 In September the issue was raised  
14 regarding our group's interest and ability to  
15 participate here, and I offered, in a letter to the  
16 Court, to disclose the aggregate holdings of my  
17 clients and also to identify the trusts that they're  
18 invested in. That's extremely confidential and  
19 proprietary trade information. I said I would do it  
20 pursuant to an acceptable protective order.

21 I tendered a protective order to OCI on  
22 October 14th. We didn't get any response to that,  
23 but on October 14th, in open court, OCI said that  
24 that protective order wasn't good enough, it only  
25 allowed OCI's counsel, not Ambac and its consultants,

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1 to review the information. I sent a revised agreed  
2 protective order to Mr. Van Sicklen and said Ambac  
3 and its consultants who have a need to know can have  
4 this information. I never got a response.

5 I have today, your Honor, just so the  
6 record's clear, marked "highly confidential and to be  
7 filed under seal for *in camera* review" the  
8 identification of the 40 or so trusts that my clients  
9 have an interest in and identifies their aggregate  
10 holdings in excess of a billion dollars. This is the  
11 information that I offered to give to the OCI  
12 beginning in September. I've been trying to give it  
13 to them. This is what they've been asking for, and I  
14 would ask if the Court would accept it for filing  
15 under seal?

16 THE COURT: Any position on that?

17 MR. VAN SICKLEN: Yes, your Honor. I  
18 don't want to get off on a tangent. We have  
19 consistently said that Mr. Greenwald and his clients  
20 can be heard here. The question of their standing to  
21 assert and call themselves RMBS Policyholders is  
22 where we differ. We've had a bunch of  
23 communications, most of it sheltered by Rule 904.08,  
24 you know, about confidentiality and settlement  
25 discussions about these disclosures.

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1 But what he has never been willing to do  
2 is allow us to get the information and share it with  
3 the people -- It doesn't do me any good to see some  
4 of these details. I need to share it with the people  
5 at OCI and the company that can go back and try to  
6 figure out what trust they're in, what percentages,  
7 and the like. And the one critical thing they've  
8 never been willing to share with us -- And we can't  
9 go back -- We can only identify our policyholders at  
10 Ambac or OCI. We can't identify who the  
11 policyholders may have sold bonds to or notes. And  
12 the problem is, as you may recall back in the --  
13 there was a disagreement early in this case between  
14 Wells Fargo the Trustee and the LVM Bondholders about  
15 which of them had the right to come in here and take  
16 legal positions. Because under the trust documents  
17 for every one of these trusts, there's rules and  
18 procedures for who gets to talk in regard to  
19 expressing significant kind of legal positions on  
20 behalf of those holdings, and there's certain  
21 percentages required and the like. And as you may  
22 recall in the filings before you, at the outset Wells  
23 Fargo took the legal position as court filings here  
24 that only it had the right to speak in court on those  
25 legal positions, not the bondholders.

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1 Later the bondholders mustered enough  
2 votes to give what's called a Letter of Direction to  
3 the Trustee in which they replaced the Trustee in  
4 having standing to take legal positions here in  
5 regard to that particular trust instrument. And so  
6 we have no way of knowing what the trust documents  
7 provide and what basis the RMBS Noteholders have to  
8 really be taken -- given weight in their comments on  
9 these fundamental legal positions that affect other  
10 holders of bonds and notes in those same Trusts. In  
11 other trustees, we haven't been able to communicate  
12 with the trustees to figure out whether they hold,  
13 you know, one percent or some meaningful percent.

14 But the point is they have the right to  
15 be heard just, like I said, anybody else that happens  
16 to want to walk in here and participate. But I do  
17 think it goes to their -- the weight that you should  
18 be giving the time and attention that they're trying  
19 to achieve in this proceeding when they've never  
20 shown us or the Court their contractual right to  
21 take, you know, legal positions in regard to these  
22 trusts. That's our position.

23 MR. RICARDO: Your Honor, may Ambac be  
24 heard on this point?

25 THE COURT: All right. Yes. Go ahead.

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1 MR. RICARDO: This is Henry Ricardo of  
2 Dewey & LeBoeuf for Ambac Assurance Corporation.

3 As the Court has heard, this is to be an  
4 open proceeding. These proceedings are occurring in  
5 open court, and, indeed, the SEC has insisted that it  
6 be this way. And what is contemplated, assuming that  
7 a Plan is confirmed, is that policyholders will come  
8 forward, fill out claim forms, and in exchange for  
9 filling out those claim forms, receive some  
10 combination of cash and notes in exchange for giving  
11 up rights under those policies.

12 The problem we have now with the current  
13 situation is that we have a group of litigants who  
14 claim to be policyholders who have asserted that they  
15 have rights to policies, but they have never  
16 disclosed the following basic information to allow us  
17 and to allow OCI to assess that claim.

18 One, what bonds do these funds own? We  
19 don't know the answer to that question, your Honor,  
20 because it's never been disclosed.

21 Two, how many of the bonds does each  
22 fund own? We don't know the answer to that question  
23 because it's never been disclosed.

24 Three, what policies that Ambac has  
25 issued are they making claims under? We don't know

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1 the answer because they've never disclosed what bonds  
2 they owned.

3 And perhaps most importantly, have the  
4 litigants who are calling themselves the RMBS  
5 Policyholders taken the steps to comply with the  
6 indenture agreements governing those bonds so that  
7 they have the contractual right to act with respect  
8 to Ambac's policies? The reason Ambac has to know  
9 the answers to these questions, the reason we're  
10 insisting upon this is we can't be subject to  
11 inconsistent claims. We can't pay out one group of  
12 hedge funds that claims to own bonds but won't tell  
13 us what bonds they own or how many of them only to  
14 have another group of hedge funds come along some  
15 other day claiming that they're the true owners.

16 We need disclosure. We need the facts  
17 to be on the table, and this proceeding has to occur  
18 in the sunlight. Thank you, your Honor.

19 THE COURT: The question was whether you  
20 can file it. I don't see any reason why you can't  
21 file it. I don't know why I would want to be  
22 reviewing it at this point in light of what's raised  
23 here. But you're filing it for what purpose?

24 MR. GREENWALD: Your Honor, I think  
25 given where we are here, I want it to be clear to the

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1 Court that the information that's been requested  
2 that's been represented that we haven't been willing  
3 to provide, we have been. It's in this envelope. I  
4 think at this point it's moot given that we're all  
5 going to be heard. I wanted just to be clear that  
6 this is the information that I was prepared to  
7 present today. And with that, we can go to the lunch  
8 break.

9 MR. VAN SICKLEN: But it's not just the  
10 information we've been asking for. That's just the  
11 difference, your Honor, just so people are clear.

12 THE COURT: Right.

13 MR. WHITMER: Your Honor, I know we're  
14 all hungry. Steven Whitmer for Wells Fargo. I  
15 didn't think this was going to be a foray into  
16 discussion about Wells Fargo and the LVM Bondholders,  
17 and I know counsel just made a comment, I think he  
18 said something to the effect LVM replaced the Trustee  
19 in having standing here. Certainly Wells Fargo has  
20 standing to be here today, and I don't know that we  
21 need to get into it anything more than that. But  
22 that's Wells Fargo's position. It absolutely has  
23 standing to be here this week.

24 THE COURT: I don't know that anybody --  
25 Nobody's objected.

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1 MR. WHITMER: That's what I understood  
2 Mr. Van Sicklen to say. I just wanted to make sure  
3 the record was clear on that point.

4 THE COURT: All right. Let's be in  
5 recess. Why don't we come back at -- Well, how much  
6 time do you need? It's 10 after 12:00. Come back at  
7 1:30? Is that agreeable? All right. 1:30. We'll  
8 be in recess until 1:30.

9 Do you have a copy of the SEC letter?

10 MR. VAN SICKLEN: Your Honor, mine has  
11 some handwritten markings. We're just going to print  
12 one off the internet and give it to your clerk.

13 THE COURT: Okay.

14 (Recess had from 12:10 to 1:31  
15 p.m.)

16 THE COURT: The Circuit Court for Dane  
17 County will be in session In the Matter 10 CV 1576,  
18 The Rehabilitation of the Segregated Account of Ambac  
19 Assurance Corporation.

20 Appearances, I'm assuming, are as they  
21 were this morning. We're ready to proceed with  
22 evidence, and, Mr. Van Sicklen, you will be going  
23 first?

24 MR. VAN SICKLEN: Yes, your Honor. I'm  
25 prepared to call our first witness.

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1 THE COURT: All right. You may do so.

2 MR. VAN SICKLEN: Okay. I would call  
3 Sean Dilweg, the Commissioner of Insurance and the  
4 court-appointed Rehabilitator.

5 THE COURT: Just walk around behind the  
6 tables. That might be better. We've got a lot of  
7 stuff down in the well here. Come over here to the  
8 witness chair, and before being seated, raise your  
9 hand to receive the witness oath.

10 (Witness sworn.)

11 THE COURT: All right. Be seated.  
12 Would you, after you pour your water, state your  
13 name.

14 THE WITNESS: Sean Armour Dilweg, the  
15 Wisconsin Insurance Commissioner.

16 THE COURT: All right. The procedure  
17 we'll ask you and all witnesses to follow will be  
18 that if you have -- if you're giving a response to a  
19 question, whoever is asking the question won't start  
20 another question while you're responding. We ask you  
21 not to start answering as the question is being asked  
22 so that we don't have talk-over and the reporters are  
23 able to then get a clear transcript.

24 All right, with that, you may proceed,  
25 Mr. Van Sicklen.

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1 MR. VAN SICKLEN: Thank you, your Honor.

2 SEAN ARMOUR DILWEG,

3 called as a witness by the Plaintiff,  
4 having been first duly sworn,  
5 testified as follows:

6 **DIRECT EXAMINATION:**

7 BY MR. VAN SICKLEN:

8 Q Good afternoon, Commissioner. Finally time for you  
9 to start with our testimony section here.

10 Would you give some background to the  
11 Court about your insurance-related background leading  
12 up to your appointment as the Commissioner.

13 A Sure. I think as it's relative to Ambac, prior to  
14 this I served in the Department of Administration,  
15 which is the oversight department for all state  
16 agencies. We handled a variety of issues, including  
17 the state and municipal bond ratings for the state.  
18 I handled a lot of the Building Commission projects  
19 that were built throughout the State, multimillion  
20 dollar University buildings and what was entailed in  
21 constructing those.

22 THE COURT: Let me just interrupt you.

23 Did you call in, Loretta?

24 THE WITNESS: We can wait.

25 THE COURT: Yeah, just wait a minute

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1 while we call in and get everybody on the phone.

2 (Call placed.)

3 All right. Are the parties on the phone  
4 now present?

5 THE OPERATOR: Yes, your Honor.

6 THE COURT: All right. Thank you.

7 Proceed.

8 MR. VAN SICKLEN: Yes, your Honor. And  
9 for the participants on the telephone, we just  
10 commenced the introductions for the first witness for  
11 the Rehabilitator, which is the Commissioner,  
12 Mr. Dilweg.

13 BY MR. VAN SICKLEN:

14 Q And Commissioner, would you maybe start over in  
15 regard to your response, for the benefit of the  
16 people on the phone, in regard to your relevant  
17 experience at the Department of Administration?

18 A So reviewing, at the Department of Administration,  
19 which oversees all of State government for the  
20 Governor, I spent time really working on the state  
21 and various municipalities' ratings dealings with  
22 rating agencies, your Honor, trying to describe how  
23 the State budget would actually try to help the State  
24 ratings, which is always a challenge. Had to sit on  
25 the University Hospital and Clinics as a designee,

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1 which is quite a large hospital authority that would  
2 handle a variety of transactions, and also set up our  
3 current health insurance risk pool which dealt  
4 specifically more with health insurers.

5 Had the pleasure of helping negotiate  
6 all of our tribal gaming compacts, which I found  
7 negotiating with tribes was very similar to  
8 negotiating with banks. And then also worked on a  
9 number of our State building projects, many of them  
10 multimillion dollars projects throughout the State.

11 Q Commissioner, the biographical sketch in the website  
12 that we were reviewing earlier this morning mentioned  
13 some prior work that you did at the Essie Consulting  
14 Group. Could you describe that?

15 A As a contract lobbyist for Essie Consulting, I  
16 handled a variety of clients ranging from the  
17 teachers' union to We Energies to entities like AT&T,  
18 to various drug companies. At the time, your Honor,  
19 We Energies was trying to construct some of their  
20 power plants in southeastern Wisconsin, so really the  
21 role there was we had our -- the lobbying entity had  
22 its hand in a variety of various interests that  
23 influenced state and national government.

24 And then prior to that, I spent about 10  
25 years staffing the Legislative Joint Finance

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1 Committee and various legislative staff positions.

2 Q Do you have any post-undergraduate degrees, and in  
3 what in?

4 A My degrees consist of an English major out of  
5 Lawrence University and then a Master's in Public  
6 Administration from the University of Wisconsin,  
7 which I obviously have used extensively in my current  
8 position running a department.

9 Q When did you assume your current position?

10 A January of 2007. Closely followed Governor Doyle's  
11 mid-term appointment, and so coming upon four years.

12 Q Could you share with the Court a brief overview of  
13 your position and the duties just generally, and then  
14 we'll turn to the Ambac side.

15 A Sure. The Wisconsin Insurance Department consists of  
16 -- well, now we're up to about 150 employees, and we  
17 handle all facets of insurance regulation in the  
18 state ranging from not only the financial solvency of  
19 our domestic insurers, but to the market conduct of  
20 any insurer licensed in the state. We license over  
21 120,000 agents. Half of those are approximately  
22 within the State.

23 And we have a variety of segregated  
24 funds ranging from the Patients' Compensation Fund,  
25 with handles medical malpractice, the Local

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1 Government Property Fund, which insures most of our  
2 local government properties. The largest claim that  
3 fund has ever seen is the explosion of the chemistry  
4 building in the 1960's on the University of Wisconsin  
5 Madison. And so it's -- We are also the sixth  
6 largest insurance state by premium volume, and we  
7 regulate some of the largest insurers in the nation.

8 Q I'm going to come back in a minute and touch upon the  
9 individual staff members who have been working with  
10 you on Ambac, but before we get to that, could you  
11 give the Court a brief overview of your personal  
12 involvement and roles in regard to the Ambac  
13 assignment perhaps starting back in 2008 and just  
14 kind of an overview coming forward?

15 A Sure. When you come in as Insurance Commissioner,  
16 your Honor, you spend a lot of time meeting the  
17 various boards and CEOs of companies that are in our  
18 state. Obviously, as I said before, we have a number  
19 of large companies and large mutual companies within  
20 the state who we recognized early on that we had two  
21 stressed monoline companies, MGIC and Ambac, and we  
22 started paying closer attention. And it was brought  
23 to my attention in late 2007, our concerns  
24 surrounding Ambac, and we began to look at their  
25 yearend results and were quite concerned when their

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1 CEO resigned. I think it was Genader. I'm not sure  
2 of his first name.

3 Q Mr. Commissioner, can you help the court reporter  
4 with the last name or the spelling?

5 A I don't know the spelling. I'd have to ask Ambac to  
6 spell it.

7 Q Okay. We'll help after a break. Go ahead.

8 A So the bond insurers were stressed in early 2008.  
9 Both Ambac and MBIA were closely tied together being  
10 the first and second largest bond insurers. Both  
11 companies and their business model were tied to the  
12 rating agencies and the AAA rating, and as we saw the  
13 CEO leave Ambac and then a capital raise and then  
14 some failed negotiations with banks -- this is all in  
15 early 2008 -- we became quite concerned. We reached  
16 out to rating agencies who I had spent time with in  
17 the past representing the State of Wisconsin and so  
18 to visit them as Insurance Commissioner was nothing  
19 new to me, and it was always their first question is  
20 some of their qualitative concerns about why  
21 management had exited when it had.

22 So we became so concerned that we  
23 brought on outside counsel and outside financial  
24 advisors. This is all prior to the collapse of Bear  
25 Stearns in the spring of 2008. Then we began to see

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1 major financial institutions collapsing and decided  
2 to start stressing the company itself as far as  
3 running stress tests across the company.

4 Q Okay. Let's come back to some of that in a minute.  
5 Could you introduce the Court to some of the members  
6 of the staff at OCI that you've brought to bear in  
7 working with you on the Ambac assignment --

8 A Sure.

9 Q -- and their respective roles?

10 A So, you know, we are not a department, your Honor,  
11 that has a liquidation department or a rehabilitation  
12 bureau. There are a number of my fellow states --  
13 like Ohio, like New York -- that have such bureaus  
14 established. Some of these are, you know, outside  
15 entities, kind of quasi-governmental authorities.  
16 The reason for that is we are not a department that  
17 seeks to -- When you set up a bureau like that, you  
18 need to feed the beast, so to speak. When you look  
19 at New York's liquidation of Executive Life, that's a  
20 liquidation that has been continuing not to occur.  
21 So we were really stuck with -- Not stuck with.  
22 They're all very good people. But we had to turn to  
23 our existing people, Roger Peterson, who's the  
24 Financial Director of our Finance Bureau; Kim Shaul,  
25 who is the Deputy Commissioner; Guenther Ruch, who is

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1 -- was the Division Administrator over -- over Roger  
2 Peterson; and Fred Nepple, who is my General Counsel;  
3 and others like Steve Junior and other direct  
4 financial analysts internal to OCI.

5 Q And was the time and energy spent by you and your  
6 staff you just identified, give a sense on how  
7 time-consuming and burdensome it was to the other  
8 work the agency was doing?

9 A It basically took -- I don't want to speak for Roger,  
10 but, you know, it took, you know, 80 to 90 percent of  
11 Roger Peterson and Kim Shaul's time. And it would  
12 ebb and flow as some of the issues came before us, so  
13 Fred Nepple, it would take, I would say, 50 percent  
14 of his time as General Counsel. Obviously, all the  
15 time having the pressures of other regulatory actions  
16 occurring in the State of Wisconsin.

17 Q And you had mentioned that OCI brought on financial  
18 and legal and other advisors starting in early 2008.  
19 Could you just identify kind of who they were and  
20 some of the roles they've been playing for OCI as  
21 we've been proceeding?

22 A Sure. There were very few -- As far as legal  
23 counsel, there are very few firms that we could  
24 identify in the state that could handle this type of  
25 an issue. Through a process we brought on both Foley

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1 & Lardner, and then quickly brought on what is now  
2 Jefferies. At the time it was First Albany Depfa and  
3 has subsequently changed hands since then. So I had  
4 worked with Ken Gibbs at First Albany on the state's  
5 ratings and the Department of Administration had  
6 retained First Albany since the early 1990's for  
7 financial advice. So these were immediately two  
8 entities that I turned to to bring in to really  
9 provide us the expertise we needed. And in early  
10 2008, we were simply trying to get a handle on the  
11 company. We were not contemplating sitting before  
12 you today.

13 Q And over time, as we've moved forward since 2008, has  
14 OCI added other specialists to the advisor team such  
15 as Todd Cooper, the Gordian Group, Eric Kolchinsky,  
16 Mr. Oros and his companies, et cetera, could you kind  
17 of explain that process and their general roles?

18 A Sure. As the demands of the stresses of the company  
19 and economy affected the company, we needed -- you  
20 know, the whole time my goal was to make sure that  
21 myself and my team had an independent view of the  
22 company, to question what the company gave us, to  
23 question what the counterparties gave us so that I  
24 could have an independent view of the company and  
25 recognize that we needed the horsepower of the

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1 Gordian Group. Todd Cooper, who had built a lot of  
2 the CDO -- synthetic CDOs was now taking them apart;  
3 Eric Kolchinsky, who had been the whistleblower at  
4 Moody's rating agency. And then others as -- Really  
5 as we saw fit, we brought on the expertise that we  
6 needed recognizing that, you know, with only four or  
7 five of us in the Department, being able to have the  
8 expertise and horsepower to understand the issues  
9 before us was important.

10 Q And one of the disclosures that we've made in the  
11 court earlier this year was the retention of  
12 Mr. Oros' entities, the Flowers Company and the like.  
13 Could you describe to the Court the expertise they  
14 added?

15 A John Oros, J.C. Flowers, really provide a similar  
16 overview as Jefferies and are able to really -- you  
17 know, my question is what the company looks like  
18 moving forward in a run-off scenario. I needed to be  
19 able to understand the resources that we need as  
20 various employees may or may not leave the company,  
21 as we look at the shape the company should be in, and  
22 then John has been retained to really give us that  
23 perspective on a moving-forward basis.

24 Q Okay. And the website mentions a Advisors Council  
25 that you've organized and put in place. Could you

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1 describe that to the Court and the role they've been  
2 playing?

3 A Sure. One thing that I did early on, your Honor,  
4 when I came into the Department is you had a very  
5 regulatory-centered department. I recognized that in  
6 order to attain resources, this Department would have  
7 to participate in the policies arena, and as you  
8 know, insurance is very complicated, and I have  
9 discovered unless it's regarding a speeding ticket, a  
10 legislator does not understand all the nuances of  
11 insurance. So I put together a variety of advisory  
12 councils on a variety of topics so that when I came  
13 to the legislature, they would understand that you  
14 had industry, consumers, agents, all in the same  
15 place on a topic such as, you know, uninsured  
16 motorists coverage or something like that.

17 I felt the same was needed for Ambac.

18 It was complicated enough, and to have a council of  
19 advisors, to me, was important, and to have some that  
20 were not being compensated that were there as experts  
21 from various -- whether it be Cuna Insurance with  
22 Jeff Post, whether it be Karl Case from the  
23 Case-Shiller Index, all of these people were people I  
24 felt valuable and could provide perspective to me.

25 Q And have you and OCI been in touch with this Advisors

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1 Council as we've been moving forward toward today in  
2 regard to the Plan and the proceedings here?

3 A Yes. As recently as last week we have kept them up  
4 to speed on the actions that we take. I felt it was  
5 important to have the Council of Advisors because  
6 they entered into confidentiality agreements on the  
7 issues that they hear so they can give me true  
8 advice, and so we have met in person and over the  
9 phone every, I would say on average, every month  
10 since I put the Council together.

11 Q Okay. And I think it's sort of undisputed, one of  
12 the few things that none of the parties in the room  
13 have ever really questioned is sort of the worsening  
14 condition of Ambac and all the similar monolines as  
15 we kind of transitioned into the later part of 2009,  
16 and I'd like to start focusing on that time period.  
17 And could you describe, before we get the specifics,  
18 kind of the regulatory options and structuring  
19 decisions and policy considerations that you and OCI  
20 were going through as you entered that more  
21 challenging period?

22 A So from a broad perspective, I mean, what you have  
23 here, your Honor, is really a company that's gone  
24 through some phases of restructure. You know, they  
25 had a number of capitalized subsidiaries, offshore

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1 subsidiaries, that collapsed, you know, to what we  
2 have today. And in 2009, we began looking at how the  
3 company, from our perspective, could run off in a  
4 more orderly manner. We had, you know, worked with  
5 the company on looking at TARP being -- TARP dollars  
6 being put into the company from the Treasury and that  
7 failed. We had seen how one of commutations were  
8 unsuccessfully propping up the company, and so we  
9 started to look at a global restructure of the  
10 company, look at the options we had.

11 My high-level approach that I've learned  
12 in my years in State government is look at every  
13 option possible before you pull, you know, the larger  
14 rehabilitation or liquidation option, and in this  
15 case that was especially true. We wanted a more  
16 surgical approach because of the thousands of  
17 policyholders where we would have triggered their  
18 covenants if we had moved forward with the full  
19 rehabilitation or liquidation.

20 Q In this period of, you know, fall through winter of  
21 2009 transitioning into early 2010, did Ambac and OCI  
22 have similar views about the financial condition in  
23 need of the company?

24 A So the approach with the company, we began meeting  
25 with the Board of Directors in April of 2009, and

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1 when you -- when a Regulator starts meeting with the  
2 Board of Directors, typically the Board takes note  
3 and starts to respond positively to the Regulator's  
4 concerns. We were typically running our -- We ran a  
5 number of stress cases on the company. The company  
6 had rosier scenarios than we did, and as time passed,  
7 our base case scenario was becoming true more and  
8 more true, and when the company went upside down in  
9 the fall of '09 on my base case scenario, in my mind  
10 it became a financially hazardous company. And when,  
11 under our statutes -- that's a term for our statutes  
12 here in Wisconsin -- once you are financially  
13 hazardous, I, as the Regulator, am bound by my  
14 statutes to no longer allow 100 cents on the dollar  
15 to go out the door.

16 We came to the Board between April of  
17 2009 and the fall with, really, a version of the Plan  
18 that is before you today, something that we felt  
19 would, you know, really bring a timeout to what was a  
20 -- They were basically in an involuntary runoff  
21 situation. They hadn't written a new policy in two  
22 years. Well, they maybe had one new military housing  
23 policy. So we were in direct contact, and although  
24 working with the company on some of the structures of  
25 our plan, we were at direct odds with a lot of the

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1 Board's view and capital raising that they were  
2 attempting to do and commutations that they were  
3 attempting to accomplish.

4 Q And Mr. Commissioner, give the Court a sense of that  
5 period of sort of friction, the efforts that you were  
6 making in terms of going to New York and pushing the  
7 Board and attending meetings and so forth.

8 A So my role, your Honor, became much more of  
9 interaction with top management and Board members.  
10 That was the role that I felt -- is the role where I  
11 felt it was my duty to convince the Board of the  
12 problems that we saw for their policyholders. I  
13 would say I was out in New York and they were out in  
14 Madison, on average, three times a month, and we were  
15 outlining why we felt our base case showed the true  
16 view of the company. And I don't think, you know,  
17 this is a company that faced -- has faced the  
18 economy, and when you look at all the modeling that's  
19 done on the exposure this company had at the time,  
20 over 40 years of exposure, once unemployment hits  
21 double digits, those models start creating trouble  
22 for the sustainability of the company, and we were  
23 witnessing \$150 million going out the door every  
24 month to residential mortgage-backed security  
25 holders, and our concern there was the fact that

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1 these were short-term policyholders that were getting  
2 a hundred cents on the dollar in a company that I  
3 viewed as financially hazardous, putting in risk the  
4 municipal, the commercial ABS, and the commercial  
5 bank policyholders.

6 So all of these had to be weighed in  
7 full context, and as I would tell the Board, they  
8 were -- the bulk of their business was organized as  
9 an insurance company, not a bank, not a business. So  
10 they had a company that they had to start thinking of  
11 things as an insurance company, and that was a  
12 challenge for them.

13 Q In order to effectuate the surgical approach that you  
14 were outlining earlier of a Segregated Account  
15 approach to rehabilitation, is that something OCI  
16 could have done unilaterally, or did you need the  
17 company's cooperation and support?

18 A Well, typically in the past, the ability to use a  
19 Segregated Account across all lines of insurance is  
20 unique to Wisconsin. Many states have the ability to  
21 do a Segregated Account for variable annuity  
22 products, but as you well know, your Honor, we have a  
23 150-year history here of insurance law that has been  
24 constructed with the legislature over those years,  
25 and we've used a Segregated Account in the past.

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1 Typically, the approach by the Department has been to  
2 take the whole company into rehabilitation and then  
3 pull out the Segregated Account. In this situation  
4 we could not effectuate that without triggering  
5 covenants across the municipalities and commercial  
6 franchised businesses across the nation, and so in  
7 order to create the Segregated Account and sequester  
8 the rupturing of liabilities, we needed to work with  
9 the Board to have them create the Segregated Account  
10 as we put it into rehabilitation, and so it's  
11 something that we could not do alone.

12 It's something that we spent a lot of  
13 time on with the company discussing how to approach.

14 It's something that, in the end, we had to work with  
15 the company on. Now, as I told the management of the  
16 company and the Board, you know, we're not partners  
17 in this. As I told them, we're just roommates, you  
18 know. This is not a partnership. We just happen to  
19 be on the same boat in the same room.

20 Q And amplify a little bit your concerns about striking  
21 the right balance between the short-tail exposures,  
22 the RMBS exposures, and the longer-tail exposures,  
23 and what you and OCI were trying to accomplish in  
24 that regard?

25 A The challenge of this company was and still is it's

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1 unique in insurance regulation because of the  
2 mark-to-market acceleration of policies. Typically,  
3 insurance departments deal with companies that have  
4 life policies, that have health, property casualty  
5 policies, all set terms. We had in our midst  
6 long-tail policyholders, the banks, that could  
7 accelerate and throw us into a situation where up to  
8 \$12 to \$16 billion would go out the door, which would  
9 rupture the company.

10 We then had, you know, if you looked at  
11 that 40-year exposure, we had in the middle there the  
12 state municipal governments that were looking for  
13 continued coverage. The rating of the company at  
14 this time had all but collapsed, so this was not an  
15 issue of a AAA rating any longer. This was an issue  
16 of going back out in the credit market and  
17 refinancing all of your debt.

18 Then we had up closer to the short-tail  
19 policyholders. You had commercial asset-backed  
20 security holders, which were a variety of our  
21 franchisees like Domino's Pizza's, Sonic, Hertz,  
22 Avis, those types of entities. And then we had the  
23 residential mortgage-backed security holders that  
24 were eating reserves at a clip of about \$1.2 to \$1.4  
25 billion a year, and we recognized that we couldn't

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1 allow those short-term policyholders to destroy the  
2 value for all the policyholders, the remaining 13,000  
3 to 14,000 policyholders in the company.

4 Q Okay. And among those would be what's often referred  
5 to as the municipal finance book?

6 A Right.

7 Q Could you give a sense to the Judge of the magnitude  
8 of those and your perspective at OCI on those?

9 A Sure. Obviously, in my prior position we had dealt  
10 with the bond insurers for the State of Wisconsin.  
11 We dealt with MBAA. We had dealt with others. But  
12 these ranged all the way from the Illinois Tollway to  
13 hospital authorities to the Broncos stadium,  
14 Philadelphia stadium. I mean, these were -- you  
15 know, to sewage districts, to sanitary districts, to  
16 entities that very rarely went into the market.

17 So these really ranged across the nation  
18 on what was, for lack of a better term, wrapped by an  
19 Ambac policy, and to ask these entities to go back  
20 out and into the market after triggering a full  
21 rehabilitation would have caused chaos in the state  
22 municipal bond market.

23 Q And while you are and OCI were making these decisions  
24 earlier this year, did you have occasion to go out  
25 and check with other state regulators and federal

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1 agencies to sort of vent your thought process, and if  
2 so, could you describe that to the Court?

3 A Sure. We spent time -- Obviously, initially as I

4 spoke we spent a lot of time with the rating  
5 agencies. The rating agencies became less relevant  
6 as the rating of the company collapsed in 2008. We  
7 spent time extensively with the New York Insurance  
8 Department, with the New York Federal Reserve. We've  
9 had a confidentiality agreement with the New York  
10 Federal Reserve for the last -- since 2001. Roger  
11 Peterson on my staff has FAWG, which stands for  
12 Financial Analysis Working Group, which meets at  
13 every NAIC meeting and looks at stressed insurance  
14 companies. So those 20 states that are members of  
15 FAWG would have worked with us extensively.

16 We met with the Treasury Department at  
17 the end of the Paulson era and the start of the  
18 Geithner era to look at TARP funding for the company.  
19 And so there was no -- We met extensively with  
20 congressional staff and state legislative staff to  
21 make sure -- state legislators to make sure that they  
22 were aware of what was going on. So we were not in a  
23 vacuum when we approached this.

24 The concerns of the New York Federal  
25 Reserve were taken note by us of a broader systemic

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1 economic impact of the company, and the approaches to  
2 Syncora, FGIC, and others that the New York  
3 department took and MBIA were well known to us.  
4 Q And Mr. Commissioner, for the benefit of the Court  
5 that hasn't lived with this like we have, explain who  
6 those entities are that you just described.  
7 A These are all other bond insurers that have  
8 subsequently had global commutations with  
9 counterparties or been in runoff scenarios or  
10 liquidation scenarios.  
11 Q And give the Court a sense of the number of times  
12 that you've met, you or your staff, with the New York  
13 Fed to discuss this.  
14 A It's eight to ten times. They let me walk in on my  
15 own these days, so it's been quite extensive.  
16 Q And obviously, given the types of objections we've  
17 received over the course of these proceedings to  
18 OCI's choice of proceeding with a Segregated Account  
19 rehabilitation, it's fair to say it would have been a  
20 lot easier to have gone, at day one, to a full  
21 rehabilitation. Explain again, if you could, to the  
22 Judge in kind of a summary fashion, notwithstanding  
23 those challenges that have been raised, why it was  
24 important to you and OCI to proceed the way you have.  
25 A As I said, you know, first of all, I always like to

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1 look at every alternative before taking any extreme  
2 action, and my staff, my advisors, the company, at  
3 some level was able to develop an alternative with  
4 this Segregated Account approach that was able to  
5 give us the opportunity with you to reorder the  
6 liabilities in the company, to take a timeout with a  
7 variety of policyholders that were eating up the  
8 claims paying ability of the company in the near term  
9 and really try and present value the value of the  
10 company where you have a company that's exposed to  
11 the full economy over 40 years, try and present value  
12 that exposure in claims paying ability and do it in a  
13 manner where you're not triggering covenants and  
14 defaults in 13,000 to 14,000 policyholders across the  
15 nation.  
16 And my understanding of the collateral  
17 damage values range somewhere between \$1 to  
18 \$3 billion of damage that could occur in the broader  
19 economy, not to mention throwing them back out into  
20 the credit markets to -- I guess the New Jersey  
21 tunnel has stopped, so to try to continue building  
22 the projects that they were working on.  
23 Q And that collateral damage estimate you just gave of  
24 1 to 3 billion, did that include the mark-to-mark  
25 potential damages for the bank group?

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1 A No. And I'd be happy to spend some time on the bank  
2 group negotiation. No, we always viewed the bank  
3 group exposure, I think we settled on -- you know, it  
4 ranged at times, but we settled somewhere around \$12  
5 to \$13 billion in mark-to-market exposure with the  
6 banks.  
7 Q Okay. And as long as we're on the bank group  
8 settlement, how did that process fit into the rest of  
9 OCI's restructuring effort of Ambac?  
10 A Well, obviously, this approach would not have worked  
11 if we had faced claims of \$13 billion. We would have  
12 wiped out the company and you would be getting, you  
13 know, two or three cents on the dollar for remaining  
14 policyholders. I think we had -- You know, one phase  
15 of our relationship with the company was one-off  
16 commutations between various bank counterparties and  
17 the company. The effect those had on the company,  
18 it's as if you were taking your mortgage and  
19 refinancing it and taking the refinance money and  
20 continued to pay your mortgage. You were unable to  
21 solve the complete problem the company was facing,  
22 and we started asking for a global commutation from  
23 the company, and those talks started in earnest in  
24 the fall of '09, and then OCI was brought in in  
25 December of 2009 to really be the bad guy on

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1 concluding the talks with the company and the  
2 counterparties. And these were --  
3 Q And just your Honor to -- or Mr. Commissioner, to  
4 break in, explain the role that OCI was playing. Was  
5 it as a regulator? Or a referee? What was the  
6 dynamics going on in those discussions at that point  
7 in time with the bank group and the company?  
8 MR. BLOOMGARDEN: Objection, your Honor;  
9 the question is calling for a legal conclusion.  
10 THE COURT: Read the question back.  
11 (Last question read back by  
12 reporter.)  
13 MR. BLOOMGARDEN: Also compound, your  
14 Honor.  
15 THE COURT: Overruled. I think this  
16 witness can answer that.  
17 A My approach, having grown up in Green Bay, your  
18 Honor, and both my grandfather and cousin played for  
19 the Packers -- I know you may not be a Packer fan,  
20 but, you know, in my view, the Regulator defines the  
21 playing field, explains what the first down is, makes  
22 sure that the parties that are participating are able  
23 to understand all the dynamics and play by the rules.  
24 And the analysis that we've been doing on the  
25 company, the analysis that the counterparties have

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1 been doing through the BlackRock analysis, all of  
2 those things we needed to find common agreement on,  
3 and we played that role of finding that common  
4 agreement on what the exposures were, what the  
5 resolution would be for a variety of different facing  
6 exposures, be it a CDOs, CDO-Squares, student loans,  
7 all of the issues that were facing the company and  
8 the banks.

9 We recognized that a global commutation  
10 was the only way for the company to survive. We  
11 could not weather the mark-to-market trigger, and so  
12 we participated fully with the company and 15 banks,  
13 14 of those being foreign banks, and they were able  
14 to move quickly to resolve issues that were brought  
15 up and we were able to reach agreement, and our role  
16 was to sign off on the agreement made between the  
17 company and the banks and, really, settle all the  
18 exposures facing the banks and the company and  
19 thereby derisk a major portion of the company and  
20 then turn and look at how we continue to work with  
21 the company to derisk further exposures.

22 Q And how would today's Plan and the type of proceeding  
23 differ but for the ability to execute on that  
24 settlement?

25 A I mean, that settlement -- if that settlement had not

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1 occurred, we would really be in the same place that  
2 MBIA is currently in. We would be in multiple  
3 jurisdictions under litigation for what is a CDS  
4 contract, what exposure were the student loans. We  
5 had counterparties that were willing to talk  
6 settlement that had approached us that were quite  
7 aware of the position that Ambac was in and had been  
8 talking to the company and OCI over the four to six  
9 months leading up to commutation. It would have been  
10 a -- You know, to lose \$12 to \$16 billion out of the  
11 company would have run it into the ground and left  
12 remaining policyholders with no value.

13 Q Mr. Commissioner, you're often quoted as touting the  
14 importance of durable coverage in this process.  
15 Could you explain to the Court what your thoughts are  
16 in that regard?

17 A And I think that's -- You know, part of the process  
18 that led us to where we were is the company had not  
19 written any new business; the ratings of the company  
20 had collapsed. The only thing left for policyholders  
21 was the durable coverage and, you know, I'm bound by  
22 statute to make sure that the interests of the  
23 policyholders are protected and the public and that  
24 all policyholders are treated fairly, and, you know,  
25 in order to look across all the various policyholders

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1 that this company had insured, we felt that this  
2 surgical approach and that providing coverage for the  
3 20-year bond note for, you know, the Sonic or Dunkin'  
4 Donuts commercial asset-backed security was one of  
5 the more -- the most important goals for  
6 policyholders.

7 Q And back before this proceeding was commenced by your  
8 Verified Petition on March 24th, did you and OCI  
9 consider other alternative types of delinquency  
10 proceedings, full rehab, liquidation, or other  
11 measures? And explain, if so, what you did.

12 A Yeah. We had looked across the board. As I said  
13 earlier, we looked at all -- I looked at all options  
14 with my advisors with the information that we have --  
15 that we had developed and recognized the triggering  
16 the covenants across the board in a full liquidation  
17 or rehabilitation would have thrown the policyholders  
18 into turmoil, and felt that some form of the  
19 Segregated Account or multiple Segregated Accounts  
20 were contemplated at one time would be the best  
21 result. And we had seen how -- You know, part of the  
22 struggle here is policyholders who were getting that  
23 hundred cents on the dollar, that \$150 million a  
24 month, you know, they weren't that excited to come to  
25 the table and stop that payment. And so, you know,

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1 our conversations with the RMBS Holders were minimal  
2 leading up to March. And also, we had looked at how  
3 the New York Department had handled similar  
4 situations and turned to them for some guidance as  
5 well.

6 Q And based upon the information made available to you  
7 and OCI through your staff and advisors, what were  
8 your conclusions about which of these options,  
9 Segregated Account rehab, full rehab, or liquidation,  
10 seemed to be in the best interest of policyholders,  
11 the public, and other creditors?

12 A The goal of a rehabilitation is just that, to  
13 rehabilitate the company and to reorder its  
14 liabilities and send it on its way. My goal here  
15 would be to say, you know, we're not trying to build  
16 back a AAA company five years from now to start  
17 selling municipal bond insurance. We're just trying  
18 to take the claim's paying ability that it has and  
19 make sure the policyholders continue to have coverage  
20 as the company runs off over the next 10 to 20 years,  
21 and, you know, and in order to -- because I had not  
22 seen where the bond insurance model was going to  
23 continue in the near term, and as we've seen, this  
24 business model has collapsed across the board.

25 So you're really in trying to reorder

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1 and create an orderly runoff of a company that has  
2 faced some of the most complicated financial  
3 instruments that have ever been created, and, you  
4 know, it was that approach and that end result that  
5 we were looking toward that -- you know, that we were  
6 looking towards.

7 Q And describe to the Court a little bit the commitment  
8 of time and energy that you and your staff, with the  
9 assistance of advisors, made to wrestling with those  
10 tough choices. Did you feel like you performed due  
11 diligence to make informed choices, and how so?

12 A Yeah. I mean, it was truly -- You know, one of the  
13 struggles where I relied on the New York Federal  
14 Reserve as well as my advisors was how to resolve our  
15 exposure to the 15 to 16 banks. And the problem we  
16 had, your Honor, is these were banks that had hedged  
17 each other. You know, if you have a company that's  
18 going bad in late '07, a number of these banks had  
19 hedges on the company going bad, so where they were  
20 coming from was difficult to ascertain because these  
21 hedges are not something that sits on the books of  
22 Ambac, but they are something that the Federal  
23 Reserve is aware of and is aware of the banking  
24 industry, and so it was very helpful to understand  
25 how to resolve and wind down the bank exposure.

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1 We stressed multiple scenarios with our  
2 advisors, Gordian Group and Jefferies, and looked at  
3 how those scenarios would affect all the  
4 policyholders, and that was, you know, time spent  
5 over most of 2009, and we, in the fall of 2009, were  
6 able to come up with this rough approach that is now  
7 very much refined in front of you.

8 Q And do you feel that you and your staff gave it the  
9 necessary commitment of time and effort to make  
10 fully-informed decisions?

11 A Yeah. Yeah. I mean, we brought in all the advisors  
12 that we needed. I felt I talked to all the outside  
13 federal regulators that I needed to understand the  
14 approach, and, you know, I think -- You know, I would  
15 not have done -- 20/20 hindsight, I would not have  
16 done anything differently. I mean, obviously, when  
17 you're making these decisions, you don't have the  
18 benefit of 20/20 hindsight, but you need to try every  
19 alternative before you start taking injunctive  
20 measures, and having grown up with a mother as a  
21 Judge, with a father as a state legislator, I was  
22 very cognizant of the role -- the role of the Court  
23 and the role of the legislative authority that was  
24 vested within my office.

25 Q And what directions or guidance did you give your

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1 staff and advisors in regard to developing the Plan?  
2 What was the stated mission that you tried to send to  
3 your subordinates?

4 A It's the statutes that bind us. There were no  
5 ulterior motives here. This is simply how do we  
6 protect the policyholders. We had some concern about  
7 the Board's conflict between the holding company and  
8 the insurance company as they served on both boards,  
9 and it was really how can you -- you know, what is  
10 the most fair and equitable and least disruptive  
11 approach to all the policyholders across the board.

12 Q One of the objecting parties, Deutsche, at page one  
13 of their objecting brief states the following. I'm  
14 just going to quote it and ask for your reaction, but  
15 it's page one, Deutsche objection.

16 "For more than two years culminating in  
17 OCI's filing of the proposed Plan last month, OCI and  
18 Ambac planned and set in motion the *sub rosa*  
19 rehabilitation of the entire Ambac company under the  
20 guise of a rehabilitation of an illegally established  
21 Segregated Account."

22 Could you share your thoughts on that?

23 A Yeah. I mean, that would be -- That's so far from  
24 the truth of the interaction between the company and  
25 ourselves. As I said before, we were not partners in

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1 this. We were simply roommates in an economic wave  
2 that hit the bond insurers, and, you know, I think in  
3 the end we needed the company to take action in order  
4 to prevent wholesale economic collateral damage. I  
5 also felt that there was no reason for the valuable  
6 employees of the company to not serve the Segregated  
7 Account as well as the General Account, and --

8 THE COURT: This is a common procedure  
9 too, isn't it?

10 THE WITNESS: It is, yeah. And we -- we  
11 also -- I felt, your Honor, I had an independent view  
12 of the company much more so than the New York  
13 Department ever had of any of its companies that it  
14 had taken action on.

15 BY MR. VAN SICKLEN:

16 Q Let's talk a little bit to follow up on that and some  
17 of the steps that you and OCI have taken to implement  
18 controls in regard to AAC. Why don't you describe to  
19 the Judge your efforts in regard to getting  
20 independent board members.

21 A As I mentioned before, we always had a concern about  
22 eight closely-held board members that shared both  
23 responsibilities for the insurance company and the  
24 holding company. Our initial interaction with the  
25 company back in 2008, you had many more functioning

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1 subsidiaries of a holding company. But for all  
2 practical purposes, the bulk of the assets of the  
3 company sat in the insurance company. We were  
4 concerned as we would recognize that bankruptcy was  
5 on the horizon for the holding company. The holding  
6 company had, in its SEC filings through most of 2009,  
7 said that they were contemplating bankruptcy.

8 We felt it important to have independent  
9 directors that represented just the insurance company  
10 as we began to face potential bankruptcy. Two of the  
11 four independent directors initially started as my --  
12 on my Advisory Council. When they were appointed to  
13 the Board of AAC, we immediately removed them from  
14 the Advisory Council for obvious reasons. But these  
15 are people that will carry forth a very independent  
16 view and approach as the insurance company moves  
17 through the process that we're in right now.

18 Q And how were the other two Board members added?

19 A The same way. The same way at the same time.

20 Q And we talked earlier about the Advisory Council that  
21 you're using. Why don't you give the Judge or the  
22 Court a sense of the Management Services Provider  
23 Agreement and the role that the company's playing  
24 with OCI going forward.

25 A Sure. The Management Services Agreement is -- was

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1 contemplated in our March filing. It is something we  
2 formalized over the summer. I've had to have my  
3 Deputy, Kim Shaul, and Chief Financial Regulator,  
4 Roger Peterson, out in New York almost weekly. I  
5 felt it was a mistake to ignore the now 270 employees  
6 at the company, and set up a duplicate silo to run  
7 the Segregated Account. You have employees at the  
8 company that have extensive experience with all the  
9 deals that were put together, the risks that the  
10 General Account faces, and so we put in place a  
11 formal -- four formal teams covering various types of  
12 asset classes between our advisors and the employees  
13 of the company, and my -- the Chief Deputy  
14 Rehabilitator, Kim Shaul, has weekly meetings with  
15 company management on all the issues that may arise,  
16 and this process worked very well as we wound down  
17 the Weinstein deal and continues to work well today,  
18 and, I think, causes to start to look at having  
19 two -- You know, one person who's a CFO in the  
20 Segregated Account, for example, and one person is a  
21 CFO in the General Account starts to become a drain  
22 on policyholders dollars.

23 So the MSP allows us full control, and

24 if we need to sever relationships, if we feel that  
25 we're not getting the services we need, your Honor,

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1 from whatever part of the company, we can sever any  
2 of those relationships with those employees and put  
3 the people we need in place to get the job done for  
4 the policyholders.

5 Q I saw the Judge give you a quizzical look. Explain  
6 what you meant by MSP.

7 A The Management Services Provider is the acronym.

8 Q Okay. And is that a written contractual arrangement  
9 that you have with the Ambac staff?

10 A We filed it in court. We've run through -- they tend  
11 to use a lot of PowerPoints out there in Wall Street,  
12 your Honor, so it's an agreement that we have on  
13 paper and is outlined in a PowerPoint and has also  
14 been reflected, I believe, it was an August filing  
15 with the court.

16 Q That's correct. That's correct. And so there are  
17 written guidelines and approval protocols and the  
18 like with regard to that --

19 A Right. Correct.

20 Q -- relationship?

21 A Yes.

22 Q And could you explain those a little for the Judge?

23 A I mean, it really gets into -- it really gets into  
24 how asking the Management Services Provider for some  
25 of their strategic approaches on derisking the

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1 Segregated Account, when you look at the residential  
2 mortgage-backed securities, there's been a number of  
3 approaches on how you start to derisk those. Do you  
4 have an auction moving forward, do you -- how do you  
5 evaluate what their value is, and then how do you  
6 move them off of the books of the company. And  
7 that's one example, how you --

8 You know, the team has been working on

9 the Las Vegas Monorail, various approaches to working  
10 with the Monorail. That's all interaction between  
11 Dave Barranco, who you'll hear from later, and Roger  
12 Peterson and Kim Shaul and then is reviewed monthly  
13 by myself and David Wallis and Mike Callan on various  
14 approaches, and it just allows -- I mean, the  
15 guidelines are there to -- simply for the employees  
16 to understand their role and relationship to the  
17 Segregated Account and for the Segregated Account to  
18 get the services we need as we need it, and if we  
19 disagree with the priority of the General Account,  
20 then we simply work with them to reprioritize the  
21 approach.

22 So it's a -- It's clearly laid out on

23 how the employees interact, and I felt it was  
24 important to allow the 270 employees to understand  
25 how to interact with the Regulator who oversees the

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1 **Segregated Account.**  
2 Q And are those services provided under the MSP  
3 something that OCI could provide on its own without  
4 the assistance of the company personnel?  
5 A **No. It would be something that we would need to hire**  
6 **an additional firm to provide these services. We**  
7 **don't have the capabilities to handle the IT needs of**  
8 **the Segregated Account and handle the HR needs, to**  
9 **handle the analysis that goes in to derisking the**  
10 **Segregated Account. So we either turn to the company**  
11 **through this relationship or bring in outside people.**  
12 Q And does the Plan propose to a continuation of those  
13 checks and balances?  
14 A **Yeah, it contemplates it at time.**  
15 Q Are you turning over -- Is OCI relinquishing control  
16 and supervision through these checks and balances  
17 pursuant to the Plan or continuing it?  
18 A **No. I mean, it clearly gives us a controlling**  
19 **interest in the Segregated Account and allows us to**  
20 **derisk the Segregated Account as we see fit using --**  
21 **it's really using the resources of the company and**  
22 **the knowledge base of the company that then feeds**  
23 **into our structure.**  
24 Q Turning to one of the other quotes by one of the  
25 objectors, this is from Depfa, Mr. Welsh, at page 28

1 of his brief. He says, "Ambac will remain free to  
2 alienate assets that otherwise might be available for  
3 payment of surplus notes. Policyholders can take no  
4 comfort whatsoever in the Commissioner's claim that  
5 he will continue to supervise Ambac to maximize  
6 payments on the surplus notes."  
7 Could you react to that allegation?  
8 A **You know, the relationship of the surplus notes to**  
9 **the General Account resides -- you know, it truly**  
10 **resides in my role or, you know, the role as the**  
11 **Commissioner overseeing the General Account. The**  
12 **goal is for the General Account to be as healthy as**  
13 **it can be to repay those surplus notes, to repay them**  
14 **sooner rather than later, to work with you on valuing**  
15 **the current economic conditions and exposure the**  
16 **company faces each year to make sure that the surplus**  
17 **notes split is appropriate, and so, you know, I don't**  
18 **see where that's an issue.**  
19 Q And what are your opinions and observations about the  
20 quality and expertise of the, you know, staff at  
21 Ambac that's, you know, working with OCI on the MSP?  
22 A **We found nothing but a committed staff. Due to**  
23 **resolving the issues at hand, I've discovered, as I**  
24 **mentioned earlier, that a number of staff that may**  
25 **have constructed these deals, you need to deconstruct**

1 them. This is not unusual in the Wall Street  
2 environment. A number of the people who were  
3 building all of these financial products are now  
4 consulting, you know, tearing apart these financial  
5 products.  
6 You need that expertise, and the  
7 advantage you have at Ambac is a number of the  
8 employees there have been there for an extensive  
9 period of time. Some of the employees that I meet  
10 have been there 10 to 20 years. They're committed to  
11 resolving the issues at the company and have provided  
12 valuable insight to our staff and our advisors on how  
13 to best value and approach the various commutations  
14 that we've worked through in the last six months to a  
15 year.  
16 Q And are these the same people that were running or  
17 leading the company as senior management back in 2006  
18 and 2007 when these instruments were created?  
19 A **No. As I mentioned before, management -- the CEO of**  
20 **Ambac left in late 2007, early 2008. So, you know,**  
21 **you have people that were beneath the senior**  
22 **management that have moved up the ranks, but these**  
23 **were not, you know, the -- the senior management, and**  
24 **that was one of Ambac's problems in the market, all**  
25 **but abandoned the company prior to a capital raise of**

1 **\$1.5 billion that they had in early 2008.**  
2 Q Okay. And what happened in regard to the Chief  
3 Financial Officer of the company?  
4 A **Sean Leonard, I don't recall exactly when he left in**  
5 **'09, but he left in 2009, so you had a different**  
6 **Chief Financial Officer.**  
7 Q And was the problem that led to the financial  
8 stresses at Ambac, in your opinion, attributable to  
9 things other than those people that left in terms of  
10 the economy and business model and the like?  
11 A **As I mentioned earlier, I think we always knew there**  
12 **would be trouble if unemployment hit double digits,**  
13 **which it did. You had an overall economy that**  
14 **collapsed. It's being termed The Great Recession.**  
15 **So although you could question some of management's**  
16 **actions of pursuing rosy scenarios, this was not**  
17 **their fault. They could not have prevented the**  
18 **economic wave that destroyed, you know, their book of**  
19 **business and has subsequently collapsed many other**  
20 **bond insurers. The bond insurance model as a whole**  
21 **is collapsing in this current market environment.**  
22 Q Earlier this morning there was some discussion about  
23 the various submissions that you have made as the  
24 Rehabilitator to the court in connection with your  
25 Plan. Give the Court a sense of the direction and

1 guidance that you gave your staff, the agency, and  
2 your advisors in preparing those. What was the  
3 purpose? What was the effort? What were you trying  
4 to accomplish through those materials?

5 A As far as which filings?

6 Q The Disclosure Statement and --

7 A Oh, just the overall?

8 Q -- the matters we were running through this morning.

9 A I thought you were thinking of August 14th filing

10 whatever. No. I think my goal has always been  
11 transparency, your Honor. Growing up professionally

12 in the legislative arena and with a mother as a

13 Judge, I recognize how important process is and

14 transparency is, and that's been the objective of the

15 website and, you know, really, the multiple filings

16 that we've tried to put out there. So I recognize

17 that as Rehabilitator, you know, the policyholders

18 need to have an avenue to understand what's happening

19 to them. I recognize the unique nature of this

20 company, and so as much information as we can get out

21 there we have been getting out there.

22 Q And what was your instructions with regard to  
23 completeness and accuracy and the like?

24 A Well, it had to -- You know, it had to be -- We took

25 a third-party view of this company, you know, and we

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1 needed to know on an independent basis and an  
2 accurate basis what was being filed and what the  
3 stresses facing the company are, and even as recently  
4 as the bankruptcy and the filing last -- on  
5 November 8th, the amount of time we spent looking at  
6 all the options and looking at the importance of  
7 moving these liabilities into the Segregated Account,  
8 I spent a lot of time with my staff and advisors  
9 understanding why that needed to occur and why that  
10 needed to occur in a timely manner and questioned,  
11 you know, as always.

12 I have worked very closely, your Honor,

13 with the Governor, who was a prosecutor, and have

14 learned that prosecutors have a different approach to

15 the world than a lot of your mergers and acquisitions

16 attorneys. Prosecutors need to develop all of the

17 facts fully before they prosecute, and that's been a

18 goal of mine, to develop all of the facts as fully as

19 I can before we take action.

20 Q Is it your position as the Rehabilitator that the  
21 disclosure statements, supplements, and the other  
22 information we identified are your records, records  
23 of the agency, in support of your Plan?

24 MR. GREENWALD: Objection, your Honor;  
25 calls for a legal conclusion. I think that's a

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1 statutory and case law question.

2 THE COURT: Could you read that back,  
3 please?

4 MR. GREENWALD: Statutory and case law  
5 question. It's question of law, not for a lay  
6 witness to testify to.

7 THE COURT: It's a statutory and?

8 MR. GREENWALD: And case law question.

9 It's a question --

10 THE COURT: Oh, case law.

11 MR. GREENWALD: -- how in Wisconsin do  
12 the courts treat the documents that are filed in a  
13 court proceeding like this. I think that's an issue  
14 that we can deal with that's law and not a question  
15 of fact for a witness.

16 THE COURT: Read the question back. Let  
17 me see if that is the case.

18 (Last question read back by  
19 reporter.)

20 Overruled. That's a proper question.

21 BY MR. VAN SICKLEN:

22 Q You may answer.

23 A Yes, they were things that we developed.

24 Q There was something you mentioned a minute ago that  
25 there were efforts that you and the agency took with

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1 regard to the recent AFG bankruptcy. I'm going to  
2 turn to that. Mr. Jenner -- I'm sorry.  
3 Mr. Greenwald's partner.

4 MR. GREENWALD: Mr. Jenner's dead.

5 MR. VAN SICKLEN: I'm sorry.

6 BY MR. VAN SICKLEN:

7 Q Mr. Greenwald's partner from Jenner & Block, Patrick  
8 Trostle, was quoted a few days ago in the New York  
9 Times as follows:

10 "The Regulator is assisting in the  
11 wrongful transfer of billions of dollars of assets to  
12 the parent shareholder in fighting to preserve a role  
13 for Ambac's management which brought Ambac to its  
14 present plight."

15 Your reaction, Mr. Commissioner?

16 A Yeah, that's not -- As I've said before, our approach  
17 here is solely for protecting the policyholder.

18 Obviously, there's a lot of moving parts with the  
19 bankruptcy. There is some value to be placed on net  
20 operating losses, and I don't see where we've  
21 constrained that value to this point. In fact,  
22 we've, by sequestering these liabilities, we've  
23 retained value for the policyholders.

24 Q And give the Court a sense of the events kind of  
25 leading up to the AFG bankruptcy and kind of the sort

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1 of unexpected acceleration of those events and the  
2 steps that you and the Agency took in that regard.  
3 A Well, as I said before, your Honor, I had to miss the  
4 Dallas-Packer game because of that, but as I also  
5 mentioned before, we were aware of the bankruptcy  
6 concerns. They were being filed by the holding  
7 company with the SEC throughout the year. We had not  
8 allowed dividends to go out to the holding company,  
9 so we recognized that the end result at some point  
10 would be bankruptcy.  
11 We were kept abreast of some of these  
12 concerns. We were also brought in to meet with  
13 potential private equity partners to resolve problems  
14 at the holding company. Those discussions with  
15 private equity partners collapsed in the end of this  
16 October. They were then informed that the company  
17 was not going to make their November 1st -- the  
18 holding company was not going to make their  
19 November 1st payment. That then, you know, under the  
20 bankruptcy law, gave -- We felt we had until the end  
21 of November before issues were resolved. Things  
22 accelerated quickly due to the inability to  
23 prepackage the bondholders and, really, the attempt  
24 here was to pre-negotiate a bankruptcy.  
25 We were very concerned with the IRS's

1 inquiries and audits into the tax refund that was a  
2 part of the President's stimulus package in early '08  
3 and felt that we needed to make sure that tax  
4 liabilities were sequestered, and also that  
5 shareholder liabilities, as the bondholders were  
6 becoming disorganized, be sequestered, so it caused  
7 us to close -- come to your court on November 8th.  
8 And we worked -- In the end we ended up working with  
9 the company on a sequencing of sequestering those  
10 liabilities in the bankruptcy.  
11 Q And did that effort protect the Segregated Account,  
12 and was that your purpose in these efforts that you  
13 made?  
14 A Yeah. I mean, that's always been the goal. You  
15 know, we worked with some of the bondholder groups  
16 and the company of the holding account -- of the  
17 holding company to try and understand how we could  
18 protect the -- retain control over and protect  
19 against losing the tax refund money and also protect  
20 against the bondholders going after any value in the  
21 insurance company. So that was the ultimate goal.  
22 Q And just in brief summary, Mr. Commissioner, turning  
23 back to -- This is the Rehabilitator's Plan, it's  
24 your Plan, correct?  
25 A True.

1 Q What has been your perspective in terms of trying to  
2 make it as fair and equitable as possible to all the  
3 constituents, policyholders, creditors, and the  
4 public?  
5 A I mean, as you look at the duty that's lodged in my  
6 office, it is to look at all of the policyholders and  
7 what benefits the bulk and treats everyone fairly,  
8 and as I talked about before, you're taking exposures  
9 over very complicated instruments over a long period  
10 of time and trying to present value those exposures  
11 and make sure that the claims are there to provide  
12 durable coverage and pay out over that period of  
13 time, and I feel at this point that it treats the  
14 public and the policyholders fairly and equitably.  
15 Q You were present earlier this morning when you heard  
16 some criticism about the proceedings being too rapid  
17 and the like. Explain to the Court your concerns and  
18 OCI's about the payment moratorium that's in place  
19 here and the balance you've been trying to strike.  
20 A As I talked about this earlier, it's not injunctive  
21 relief like that. It's not something I requested  
22 lightly from the Court. You know, this is -- The  
23 goal here, as we've always said when we came to you  
24 in March, was to come back to you in six months with  
25 a more detailed Plan, and the goal here is to start

1 paying claims next year under this Plan that we've  
2 put together, and the injunctive relief has currently  
3 stemmed up to about \$980 million going out the door,  
4 and we look to really reorder the liabilities of the  
5 company to make sure that no policyholder is  
6 disadvantaged over the other.  
7 The company has lost the ability to  
8 really stem these types of losses, and that forces  
9 me, when a company becomes financially hazardous, to  
10 step in and start protecting all the policyholder  
11 interests.  
12 MR. VAN SICKLEN: Okay. That's all I  
13 have, your Honor. Thank you.  
14 THE COURT: All right. This may be a  
15 time to take the afternoon recess, and then we'll  
16 turn over to cross-examination. So you may step down  
17 and we'll be in recess for 10 minutes.  
18 (Recess had at 2:52 p.m.)  
19 (End of Reporter Poirior's  
20 segment.)  
21 (Begin Reporter Weisling  
22 Section D.)  
23 THE COURT: The circuit court for Dane  
24 County will be in session again in the matter 10 CV  
25 1576. We had recessed with direct of Mr. Dilweg

1 being completed. Mr. Greenwald, are you going to be  
2 the first cross-examiner?

3 MR. GREENWALD: Yes, Your Honor.

4 THE COURT: All right. Proceed.

5 MR. GREENWALD: Thank you. And before  
6 we do that, one housekeeping matter. The objectors  
7 be collectively have put together a series of binders  
8 that we've marked for identification, exhibits. Your  
9 Honor has a version of the binders on Your Honor's  
10 step, I believe.

11 THE COURT: These are mine.

12 MR. GREENWALD: Yes. I'm sorry, there  
13 are two boxes apparently. Perhaps we could help set  
14 those up for you. Could you go up there? We put the  
15 documents together. These are mostly documents from  
16 the record, documents that various objectors thought  
17 that if we could have available in a notebook we  
18 could draw Commissioner Dilweg's and others'  
19 attention to easily by flipping tabs.

20 THE COURT: Is that what those are over  
21 there in the jury box?

22 MR. GREENWALD: The copies in the jury  
23 box are the ones for the witness. And I would  
24 propose to have my generous assistant here, Cleo  
25 Murray, sit next to the jury box and hand notebooks

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1 to Commissioner Dilweg as necessary, and then  
2 Commissioner Dilweg could open to a tab as necessary  
3 as we go through the examination.

4 THE COURT: Is everybody up to speed on  
5 this? Everybody's got the documents?

6 MR. VAN SICKLEN: We just received them  
7 in the boxes this morning. I haven't had a chance to  
8 review them, but I guess we'll deal with them as they  
9 come. A lot of them seem to be copies of things  
10 already in the proceeding.

11 MR. GREENWALD: And we're not moving  
12 them into evidence at this time. The sole purpose is  
13 to just facilitate and move as quickly as possible  
14 through examination. And all the objectors are  
15 agreed to these collectively, there's some that some  
16 will want to use and some that others will want to  
17 use. It just seemed like the easiest way to do the  
18 examination.

19 THE COURT: And the boxes in back of the  
20 clerk, are those similar to the ones the witness will  
21 be using?

22 MR. GREENWALD: Identical, Your Honor.  
23 And there's an index in front of the each notebook  
24 for the entire set of notebooks. And, again, they're  
25 just marked for identification. We'll deal with the

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1 evidentiary issues later.

2 THE COURT: I don't think I'll need to  
3 have those presented. I'd rather hear what the  
4 witness is saying as the witness goes through the  
5 exhibits, since I've got those for later reference.

6 MR. VAN SICKLEN: And, Mr. Greenwald,  
7 perhaps he could -- I know the objectors had agreed,  
8 it changed a few times, on the order in which they --

9 MR. GREENWALD: You keep settling with  
10 some of the folks on the objectors' side.

11 MR. VAN SICKLEN: I'm sorry. Maybe you  
12 could help the judge and myself understand the order.

13 MR. GREENWALD: I know for sure I'm  
14 going first. And following me I believe Depfa and  
15 others will be asking questions of Mr. Bloomgarden  
16 from Freddie Mac and perhaps others. One of the  
17 things that we've all talked about is - and let me  
18 back off of this -- that a lot will depend, of  
19 course, on what happens during the course of  
20 preceding examinations. But we've basically agreed  
21 on our side to present people in an orderly fashion  
22 and not to fight for the microphone.

23 THE COURT: All right. Then you may  
24 proceed. And it is incumbent upon you then to leave  
25 something for them to deal with.

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1 MR. GREENWALD: I will leave more than  
2 crumbs. Yes, Your Honor. And if I could have Ms.  
3 Murray sit next to the jury box?

4 THE COURT: That would be fine. Do you  
5 need a chair? Is there a chair there?

6 **CROSS-EXAMINATION**

7 BY MR. GREENWALD:

8 Q And is it all right if I call you Commissioner?

9 A **Um-hum.**

10 Q Very good. Before I go into some of the questions  
11 that I had prepared, I wanted to ask a few questions  
12 about some matters that you just testified to  
13 specifically.

14 One of the issues that you raised was  
15 that you had formed an advisory council to assist you  
16 in evaluating how to proceed?

17 A **That is correct.**

18 Q And on that advisory council was there any  
19 policyholder represented?

20 A **None to my knowledge.**

21 Q And as part of the advisory council did you consult  
22 with any policyholder representatives to advise you  
23 as part of that council?

24 A **No. It was completely a selection that I pursued and  
25 consulted with some of my advisors to draw up -- the**

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1 formal term would be a council of advisors.  
2 Q During your testimony you made some comments about --  
3 well, the first comment, and I'm going to paraphrase  
4 because I don't have your exact testimony, but that  
5 Ambac started to think of itself not as a bank but as  
6 an insurance company. I wanted to ask you to explain  
7 more what you meant by that.  
8 A My comment was to the board that they should  
9 recognize that they are an insurance company and not  
10 a bank and therefore all the issues surrounding  
11 rehabilitation or other options under the laws of  
12 insurance and having the ability to pay claims is  
13 something that you need to have when you're organized  
14 as an insurance company.  
15 Q In your view how were they looking at themselves as a  
16 bank before that?  
17 A I think some of the leverage points that they were  
18 at, some of their approaches to the market. And, you  
19 know, my goal here was to protect the policyholder,  
20 not go to the next shiny option.  
21 Q With regard to the conflict issue that you raised,  
22 could you explain that in more detail.  
23 A I touched upon the fact that the original eight board  
24 members represented both AAC and AFG, and I and my  
25 advisors felt with a bankruptcy looming there would

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1 be a conflict occurring between the insurance company  
2 and the holding company.  
3 Q You testified that there were four independent  
4 directors who are added to the Ambac Assurance Board?  
5 A That is correct.  
6 Q And when did that occur?  
7 A I believe it was end of October or the Monday,  
8 October -- I believe October 25th is a Monday.  
9 Roughly.  
10 Q And can you identify the board -- new board members?  
11 A You had Thomas Gybel, Walter Harris, Gary Stern, and  
12 I think Diana -- I don't recall the third  
13 individual -- or the fourth, I'm sorry.  
14 Q Now, are those four individuals the minority on the  
15 board?  
16 A They would be.  
17 Q Back in 2009, 2010 when you and your department were  
18 talking to Ambac about what's become the  
19 Rehabilitation Plan, were those independent directors  
20 on the board at that time?  
21 A No. The independent directors were appointed only in  
22 October of this year.  
23 Q So in your view this was a conflict issue that  
24 existed at the time that Ambac was working with you  
25 on the Rehabilitation Plan?

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1 A I had a concern that as they faced bankruptcy there  
2 would be a conflict.  
3 Q You've discussed in some detail and consistent with  
4 your prior filings that Ambac's financial condition  
5 began to decline as early as 2007; is that right?  
6 A That is correct.  
7 Q And that it became very serious even before the Bear  
8 Stearns bailout in March of 2008?  
9 A That is correct.  
10 Q According to the verified petition that you filed in  
11 March, Ambac's combined statutory surplus and  
12 contingency reserves fell from a reported  
13 \$6.4 billion in the fourth quarter of the 2007 to  
14 \$1.16 billion by the third quarter of the 2009?  
15 A Could you review that again for me?  
16 Q Sure. \$6.4 billion in the fourth quarter of 2007 and  
17 fell to \$1.16 billion by third quarter of the 2009?  
18 A Yeah. I would have to see the document, but I assume  
19 you're quoting from what we filed.  
20 Q That's at Page 4 of the verified petition, Paragraph  
21 6 --  
22 MR. GREENWALD: And, it's okay, Cleo, we  
23 don't need to get that document.  
24 Q Would you like to see it?  
25 A No, that's all right.

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1 Q Now, you said that OCI began in April of 2009 to  
2 prepare the plan that we now have before us; is that  
3 correct?  
4 A We began meeting with the board in April of 2009; we  
5 began working on the plan later in that year.  
6 Q When did you first decide to use a Segregated Account  
7 as part of the overall restructure of Ambac?  
8 A I think we approached the Board with a more detailed  
9 plan somewhere in the summer of 2009, and that  
10 included the concept of a Segregated Account.  
11 Q Sometimes referred to as splitting the books of the  
12 company?  
13 A In this case you're really sequestering some of the  
14 liabilities. The General Account is continuing to  
15 pay claims.  
16 Q And when you raise the issue of the -- Strike that.  
17 Can you explain what happened in the  
18 MBIA case with respect to its accounts?  
19 A The MBIA case, my understanding, under the  
20 Department's order split the nonperforming assets  
21 with the performing assets.  
22 Q And that was not pursuant to a court proceeding?  
23 A That's my understanding.  
24 Q And when did that occur, do you recall?  
25 A I don't have an exact date on that.

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1 Q Do you recall meeting with -- Before we get there  
2 so, strike that question.  
3  
4 When I use AFG, can I use that  
5 terminology for Ambac Financial, the parent of Ambac  
6 Assurance, or should I just say Ambac Financial to be  
7 clear?  
8 A **AFG is fine with me.**  
9 Q And then with regard to the insurance company, AAC,  
10 Ambac Assurance?  
11 A **That is correct.**  
12 Q Do you recall meeting with AFG executives in New York  
13 in November of 2009?  
14 A **It would have been one of the times I met with them.**  
15 Q And you did so after AFG warned that it may need to  
16 file for bankruptcy protection as early as the first  
17 quarter of 2011?  
18 A **I would have to review the SEC filings, but if that's**  
19 **from their filings. They were very transparent on**  
20 **their concerns with their SEC filings.**  
21 Q Do you recall in November of 2009 that you publicly  
22 rejected the use of a Segregated Account?  
23 A **No. I recall disagreeing with a good book-bad book.**  
24 Q Can you explain that, please.  
25 A **Yeah. I think at the time you had the New York**  
**Department taking action on MBIA, and that approach**

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1 **to me was not -- you were arbitrarily drawing a line**  
2 **between bad assets and good assets without the**  
3 **oversight of the court.**  
4 Q What was it about MBIA drawing a distinction between  
5 good assets and bad assets that you disagreed with?  
6 A **They were arbitrarily drawing a line.**  
7 Q Between good and bad?  
8 A **Yeah. I mean, where -- yeah, between good and bad**  
9 **assets. I think you could argue there were still**  
10 **some bad assets in a good account and vice versa, and**  
11 **that's what they're in the middle of litigation on.**  
12 Q So in your view an arbitrary distinction between good  
13 assets and bad assets is not an acceptable practice?  
14 A **Yeah. There was no oversight by a court, and I felt**  
15 **that that was the approach they had taken.**  
16 Q Now, when was it that OCI decided that the Segregated  
17 Account approach was the preferred approach?  
18 A **We presented a plan to the Board sometime in the**  
19 **summer of 2009.**  
20 Q So the Segregated Account approach had been in the  
21 works for about nine months before it was actually  
22 filed in March of 2010?  
23 A **Yeah. The idea of a Segregated Account or multiple**  
24 **Segregated Accounts.**  
25 Q And what was either AFG's or AAC's response to a

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1 proposal for a Segregated Account?  
2 A **The only way the Segregated Account would work is if**  
3 **you had a global commutation with the banks, and I**  
4 **think their approach was to continue one-off**  
5 **commutations with the Segregated Account, as I**  
6 **recall.**  
7 Q Now, when -- Strike that . The bank deal was  
8 reached in principle when?  
9 A **That was in March of this year.**  
10 Q And the bank deal -- Strike that.  
11 There was an agreement in principle with  
12 regard to the banks prior to your filing the verified  
13 petition for rehabilitation; is that correct?  
14 A **I mean, I was, you know, it was within a day or so,**  
15 **our filing.**  
16 Q Prior to the filing of the verified petition had you  
17 disclosed to the banks that you would be seeking to  
18 implement a Segregated Account approach?  
19 A **That was one of our threats to the banks, to move**  
20 **them into the Segregated Account if they did not**  
21 **reach conclusion.**  
22 Q So the banks -- Strike that. In fact, embedded in  
23 the agreement in principle were terms that related to  
24 the Segregated Account; is that true?  
25 A **I'd have to review the actual agreement. I haven't**

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1 **looked at that in a long time.**  
2 Q Were there other policyholders that you disclosed to  
3 that there was going to be a Segregated Account  
4 approach prior to filing the verified petition?  
5 A **I don't recall exactly who else we had conversations**  
6 **with and what other policyholders we had**  
7 **conversations with.**  
8 Q Was there a time prior to filing the verified  
9 petition that you were prepared to put all of Ambac  
10 into rehabilitation?  
11 A **Yes.**  
12 Q When was that?  
13 A **Each month we paid out \$150,000.**  
14 Q And did you threaten Ambac with doing that at some  
15 point?  
16 A **Yeah. We conveyed that in a letter to the Board.**  
17 Q And what was the purpose of conveying that to the  
18 Board?  
19 A **The Board is conflicted between its duties to the**  
20 **shareholders and the policyholders, and our view was**  
21 **solely that of protecting the policyholders, and we**  
22 **had to -- in order to have the plan initiated we**  
23 **needed to make sure that the Board created and moved**  
24 **the liabilities into the Segregated Account. And so**  
25 **their only other choice would have been a full**

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1 rehabilitation.  
2 Q You said that the Board was conflicted and that they  
3 were -- Strike that.  
4 You said the Board was conflicted,  
5 correct?  
6 A Correct.  
7 Q And I believe what you were saying was that they were  
8 resistant to creating a Segregated Account; is that  
9 correct?  
10 A No.  
11 Q Okay. Can you explain what -- when you said that the  
12 Board was conflicted and they needed to take care of  
13 these liabilities, can you explain what you mean?  
14 A As I said earlier, the Board was very interested in a  
15 Segregated Account and a continuation of the one-off  
16 commutations. And the global commutation was it was  
17 something that they were -- they had not contemplated  
18 until we pushed them. And so those two, the  
19 combination of the global commutation and the  
20 Segregated Account resulted in the filings we had on  
21 March 24th.  
22 Q I want to ask some questions about your testimony  
23 regarding the reasons that the overall restructure  
24 was sort of the related the way it was. You  
25 testified that one of the purposes of the approach

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1 that you took in creating the Segregated Account and  
2 putting it into rehabilitation was to stabilize the  
3 municipal bond business; is that correct?  
4 A It was to stabilize all the policyholders. So you  
5 had a variety of policyholders, be it commercial ABS,  
6 municipal, that needed to have, continue to have  
7 durable coverage.  
8 Q Do you recall that when you were interviewed by, I  
9 believe it was Mark Crumpton and Julie Hyman on  
10 Bloomberg on March 25th that you told them that one  
11 of the reasons that you adopted the Segregated  
12 Account approach was to stabilize existing  
13 policyholders in the muni book and the commercial ABS  
14 book?  
15 A Yeah. I mean, I recall that interview.  
16 Q The muni bonds and commercial ABS are in the General  
17 Account; is that correct?  
18 A That's correct.  
19 Q Another of the purposes for creating the  
20 Rehabilitation Plan, you've testified, was to protect  
21 the public generally from what you've described as  
22 collateral damage; is that correct?  
23 A Correct.  
24 Q And under the current plan the policyholders in the  
25 General Account are allowed to be paid a hundred

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1 cents on the dollar as they present claims; is that  
2 correct?  
3 A It goes back to how you present value the exposure of  
4 all of these policyholders. So over time durable  
5 coverage results in the ability for these  
6 municipalities or in some cases the commercial ABS to  
7 continue to have coverage over a 20-year life of a  
8 bond or 30-year life of a bond.  
9 Q Let me go back to the question. In the General  
10 Account today and as proposed in your plan, municipal  
11 bond policyholders if they present a claim will be  
12 able to collect a hundred cents on the dollar on that  
13 claim in cash as presented, correct?  
14 A Yeah. It would not put the General Account into  
15 rehabilitation.  
16 Q And the commercial asset-backed security book of  
17 policyholders in the General Account, even under this  
18 plan, will be able to get paid a hundred cents on the  
19 dollar as they present claims, correct?  
20 A As claims come in.  
21 Q Now, have you read Mr. Wallis' affidavit that was  
22 filed on the first day orders in the bankruptcy  
23 proceeding?  
24 A Actually I haven't read that affidavit.  
25 Q Are you aware that Ambac has represented to the

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1 bankruptcy that one of the purposes of their view of  
2 one of the purposes Segregated Account is to preserve  
3 enterprise value in Ambac Assurance?  
4 A Like I said, I haven't read it -- A few things  
5 happened in March, Your Honor. There was a little  
6 federal law called health care reform that passed on  
7 March 23rd, so my time has been split between Ambac  
8 and federal health care reform, so I haven't kept up  
9 to breast on every Ambac issue.  
10 Q Commissioner Dilweg, have you ever spoken to anyone  
11 the AFG or AAC about value preservation for the  
12 shareholders of AAC?  
13 A We obviously spent time on discussions on the NOLs  
14 leading up to the bankruptcies.  
15 Q And preserving those NOLs for the benefit of the  
16 shareholder AFG?  
17 A No. We've always approached it as a benefit for the  
18 policyholder. We would continue to generate NOLs,  
19 it's my understanding, moving forward for AAC, and  
20 that is something of value to the insurance company  
21 and the policyholder.  
22 Q We're going to get to it in more detail later, but,  
23 sir, you entered into an agreement in principle with  
24 an ad hoc committee of AFG's creditors recently,  
25 correct?

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1 A **We discussed a nonbinding term sheet.**  
2 Q And pursuant to that term sheet, as much as  
3 \$4 billion in NOLs would be allowed to be upstreamed  
4 to AFG?  
5 A **That's not my understanding.**  
6 Q Okay. We will look at that later then. You  
7 determined that an orderly runoff of the Segregated  
8 Account would benefit creditors of the General  
9 Account, correct?  
10 A **Correct.**  
11 Q And OCI and AAC chose the Segregated Account approach  
12 rather than a full rehabilitation of AAC to minimize  
13 loss to AAC's parent company, AFG?  
14 A **No. We always understood where -- we hadn't paid AFG**  
15 **anything for a period of about 18 months, so the**  
16 **resulting stance of AFG was not our concern.**  
17 Q Another purpose of creating the Segregated Account  
18 was to give you leverage to settle claims in the  
19 Segregated Account; is that correct?  
20 A **The -- To bring people to the table to resolve the**  
21 **policy claims with the insurance company.**  
22 Q So just to be clear, one of the purposes of creating  
23 the Segregated Account was to get people to the table  
24 to settle and commute their policies?  
25 A **Right. You had a company that was under water, and**

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1 **if you're not able to talk to all the policyholders**  
2 **to try and reach some agreement, you'd be unable for**  
3 **the company to be rehabilitated.**  
4 Q The commutations that you intend to reach with  
5 Segregated Account policyholders will result in  
6 policyholders being paid less than a hundred percent  
7 of the present value of their claims; is that  
8 correct?  
9 A **No. We're entering -- Under Wisconsin law we are**  
10 **paying the full claims through a cash surplus note**  
11 **split that will be evaluated each year on a**  
12 **going-forward basis.**  
13 Q That wasn't my question. My question had to do with  
14 commutations and settlements. But I want to get back  
15 to that.  
16 A **On a commutation basis you're always discussing some**  
17 **sort of settlement agreement that may be less than**  
18 **full value.**  
19 Q Right. So one of the purposes of filing the  
20 Segregated Account was to get leverage to convince  
21 policyholders to agree to a haircut on their claims?  
22 A **You're trying to bring policyholders to the table to**  
23 **reach agreement, whether it be Weinstein or Las Vegas**  
24 **Monorail or the bank counterparties, for that matter.**  
25 Q One of the points we're going to get into more detail

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1 later, but one of the points that you just raised is  
2 this deeming of the receipt of 25 cents in cash and  
3 75 cents in a surplus note as payment?  
4 A **Um-hum.**  
5 Q When we speak about payments of claims we're talking  
6 about only 25 cents in cash and then a promise to pay  
7 at some point in the future?  
8 A **Surplus note is, you know, paid out over a period of**  
9 **time. I mean, it has value in the future, so you're**  
10 **trying to present value the exposure of a company.**  
11 Q When a policyholder in the General Account presents a  
12 claim, it gets paid a hundred cents in cash, correct?  
13 A **Currently the General Account policyholder is**  
14 **receiving -- if they have a full claim, it's a**  
15 **hundred cents in cash.**  
16 Q Now, Ambac Assurance had two lines of insurance  
17 business, financial guaranty and financial services;  
18 is that correct?  
19 A **I believe so.**  
20 Q And the municipal bond and residential  
21 mortgage-backed security financial guaranty insurance  
22 business were both part of the financial guaranty  
23 line of Ambac's insurance business, correct?  
24 A **Yeah. I mean, I haven't looked at the structure of**  
25 **the company in a while.**

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1 Q Well, Ambac was mono-line insurer?  
2 A **Correct.**  
3 Q And it had Financial Guaranty Insurance as its  
4 insurance line?  
5 A **Um-hum.**  
6 Q I'm sorry you have to answer yes or no?  
7 A **Yes.**  
8 Q And that insurance line was comprised in part by  
9 municipal bonds and in part by RMBS?  
10 A **Right. Right. Correct.**  
11 Q It also had commercial mortgage-backed securities in  
12 it?  
13 A **Correct.**  
14 Q Okay. OCI worked with AAC to select the policies  
15 that would be allocated to the Segregated Account?  
16 A **We worked with our financial advisors, we worked with**  
17 **the company. You know, that was a process that, you**  
18 **know, Roger Peterson, who will be up later this week,**  
19 **can look at much more than closely. But there was a**  
20 **process of reaching what policies went into the**  
21 **Segregated Account.**  
22 Q Was it OCI that decided what policies went into the  
23 Segregated Account or was it Ambac?  
24 A **No. It was our office in working with our advisors,**  
25 **the student loan portfolio's an example of how that**

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1 process continued, you know, following the initial  
2 March filing.  
3 Q When did the selection process for the policies that  
4 would go into Segregated Account begin?  
5 A I don't recall exactly when it began. So it was  
6 sometime in 2010 or early 2010.  
7 Q I think your testimony was that the idea of a  
8 Segregated Account was presented to Ambac's Board in  
9 the summer of 2009?  
10 A That is correct.  
11 Q And is it your testimony that it wasn't until early  
12 2010 when anybody sat down to begin selecting the  
13 policies that would be in the Segregated Account?  
14 A I mean, going through over 700 policies takes time.  
15 We had an idea of what policies were rupturing the  
16 company, and we had an idea what policies would be  
17 put in the Segregated Account, but that detailed work  
18 wasn't done until the early part of 2010.  
19 Q As I understand it the methodology was to determine  
20 what policies were adversely affected by current  
21 claims or expected claims?  
22 A We had various approaches to look at the policies on  
23 how they were performing.  
24 Q Let me ask you an open-ended question. I haven't had  
25 an opportunity to, you know, take your testimony

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1 earlier. So what was the methodology for determining  
2 what policies would go into the Segregated Account  
3 and which would be left in the General Account?  
4 A That's something that I didn't spend much time on.  
5 That was something that my staff spent time on, and  
6 we had specific recommendations when we came to your  
7 court, judge, in March of 2010.  
8 Q Did you give your staff guiding principles for what  
9 methods used to determine what should be in the  
10 Segregated Account and what should be in the General  
11 Account?  
12 A We were trying to, as I had already said, we were  
13 trying to handle each of policyholders fairly on what  
14 they would be receiving while we tried to sync up the  
15 exposure that the company had in its claims-paying  
16 resources. The details of the policies were left up  
17 to Roger Peterson, who is very adept at working with  
18 the financial advisers on this. So I think he would  
19 be very willing to respond.  
20 Q And we'll have an opportunity to talk to Mr. Peterson  
21 today or tomorrow. Did you at any time point come to  
22 an understanding of how policies were selected to  
23 stay in the General Account even though they faced  
24 present claims or expected future claims?  
25 A We had looked at -- we had a high-level overview of

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1 what policies were going to stay in the General  
2 Account, what policies were going to go into the  
3 Segregated Account. So that was given to me as we  
4 entered the latter part of March.  
5 Q Well, Commissioner, though, you do understand that  
6 there are currently sitting in the General Account  
7 municipal bond policies that are considered adversely  
8 affected by claims or expected claims?  
9 A I believe we paid out about \$10 million in claims  
10 since taking action in March.  
11 Q Well, the disclosure statement indicates that  
12 \$5.2 billion of General Account par outstanding is  
13 adversely affected. Are you aware of that?  
14 A No. I haven't looked that closely at that.  
15 MR. GREENWALD: Cleo, if you could give  
16 Commissioner Dilweg Exhibit No. 27.  
17 Q And, Commissioner I'm going to draw your attention to  
18 Page 8 of the disclosure statement.  
19 THE COURT: Let everybody catch up.  
20 MR. GREENWALD: Sure.  
21 THE COURT: Everyone's reaching for the  
22 binder.  
23 MR. GREENWALD:  
24 Q So I'm showing you what's been marked for  
25 identification as Objectors' Exhibit 27 and would

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1 draw your attention to Page 8 of that document, and  
2 before we go there, for the record, this is the  
3 disclosure statement accompanying plan of  
4 rehabilitation filed on October 8th, 2010.  
5 Let me ask the first question,  
6 Commissioner. Do you recognize this document?  
7 A Yes. This is the disclosure document.  
8 Q And did you review this document before it was filed  
9 on your behalf?  
10 A I had a high-level summary of the document working  
11 with my advisors and my staff.  
12 Q Well, let me ask you about one of the disclosures  
13 here and see if it's something that you knew prior to  
14 today. It states that AAC's periodic credit review  
15 indicates that relatively few exposures are perceived  
16 to be problematic at this time. Approximately  
17 \$5.2 billion of General Account net par outstanding  
18 is adversely classified with the majority of such  
19 policies found in the 1A and 2 classifications. Do  
20 you see that?  
21 A I do.  
22 Q So it's true, isn't it, that \$5.2 billion of par  
23 value that's adversely affected by claims or expected  
24 claims remain in the General Account?  
25 A That's correct. I mean, my understanding was -- when

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1 I get briefed on the General Account, Your Honor,  
2 we're watching about 75 claims that may have some  
3 adverse problems. I don't always get down into the  
4 total value of those claims, but with over \$260 to  
5 \$280 billion worth of exposure, that's something that  
6 we track. We spent some time on Harrisburg,  
7 Pennsylvania recently. So it seems to be right.  
8 Q So with regard -- Let's ask about Harrisburg. A  
9 couple of months ago Harrisburg indicated that it was  
10 going to default on an interest payment on one of its  
11 bonds, correct?  
12 A They were deciding -- Yeah. They wanted to  
13 voluntarily default.  
14 Q And what did OCI say about whether it would pay that  
15 claim in cash if it was presented?  
16 A We never had to answer that question. My  
17 understanding is staff went down from Ambac, because  
18 this is the General Account, in the end the State  
19 stepped in and took over payment on that issue.  
20 Q If the Harrisburg municipal bond, which remains in  
21 the General Account, experiences losses in the future  
22 and a claim is presented, is it the current intention  
23 of the Commissioner to pay that in cash, a hundred  
24 cents on the dollar?  
25 A You're getting into an issue where you have --

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1 THE COURT: Speculation.  
2 THE WITNESS: Yeah.  
3 MR. GREENWALD:  
4 Q Well, let me rephrase the question then. If any of  
5 these \$5.2 billion in par policies within the General  
6 Account experience losses into the future, based on  
7 the current plan the intention would be to pay those  
8 claims 100 cents on the dollar, correct?  
9 MR. VAN SICKLEN: Objection.  
10 Speculation.  
11 THE COURT: Well, let's just see if he  
12 can answer. But it is speculation because you're  
13 asking if something would happen in the future would  
14 you do this. There may be other options as well.  
15 Can you answer that?  
16 THE WITNESS: You're going to get into  
17 each issue, Your Honor, the voluntary nature of  
18 Harrisburg, for example, not paying when they have  
19 the capability to pay. You know, you get into all  
20 types of questions on the nature of each nonpayment  
21 and that is the duty of the General Account to bring,  
22 you know, make us understand whether it's a valid  
23 claim or not.  
24 THE COURT: Sustain the objection.  
25 MR. GREENWALD: Let me rephrase it.

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1 Q And I understand perhaps the reluctance to answer  
2 about specific bonds. And I'm now asking about the  
3 general approach, the General Account versus the  
4 Segregated Account. Is it true or not true that the  
5 expectation is that the General Account will pay  
6 claims for policies in the General Account 100 cents  
7 in cash as presented.  
8 A Valid claims have been over the last six months and  
9 will continue to be paid in cash at this point.  
10 Q And the claims in the Segregated Account pursuant to  
11 the plan would be paid with 25 cents in cash and a  
12 75-cent surplus note?  
13 A The valid claims of the Segregated Account are a cash  
14 note split. And that may change. That ratio may  
15 change in the future.  
16 Q Is there any intention to place any of the adversely  
17 affected policies from the General Account into the  
18 Segregated Account in the future?  
19 MR. VAN SICKLEN: Same objection.  
20 Speculation.  
21 THE COURT: Sustained.  
22 MR. GREENWALD: Well, with all due  
23 respect what I'm trying to find out is where we sit  
24 in terms of how Ambac works in the General Account  
25 and the Segregated Account.

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1 Q Is there anything in the General Account today  
2 limiting Ambac's obligation to pay a hundred cents on  
3 a claim presented from a General Account policyholder  
4 if it's a permitted claim?  
5 A Could you rephrase the question?  
6 Q Yeah. A valid claim is presented by the General  
7 Account policyholder; is there anything to limit  
8 Ambac's obligation to pay that in a hundred cents on  
9 the dollar today?  
10 A Not at this time.  
11 Q And, Commissioner, you're not willing to speculate in  
12 the future about what the Commissioner might do about  
13 the General Account claims in the future?  
14 A Not at this time.  
15 Q And you may very well know the statute perfectly and  
16 I may not bring it to show it to you, but I'd like to  
17 ask questions about, because Section 611.24. And I  
18 suspect that --  
19 MR. GREENWALD: And actually, Cleo,  
20 could you move the notebook? Thank you.  
21 Q Would you like the statute in front of you? I have a  
22 series of questions about it.  
23 A Sure.  
24 Q Okay. It's Exhibit 49, marked for identification as  
25 Exhibit 49. What I put in front of the you,

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1 Commissioner marks for identification a Objectors'  
2 Exhibit No. 49 is the Westlaw printout of the  
3 Wisconsin Statutes Chapter 611.24. Are you familiar  
4 with the statute?  
5 A **I rarely read the status anymore.**  
6 Q Well, this is the statute that relates to Segregated  
7 Accounts?  
8 A **Um-hum.**  
9 Q Have you reviewed the statute previously?  
10 A **This is the job that my general counsel has, Your  
11 Honor, so I rely on his expertise and visit with him  
12 and my legal counsel on the statutes.**  
13 Q Then I'll ask just some basic questions with that  
14 warning.  
15 A **Sure.**  
16 Q Section 611.24(1) provides for mandatory Segregated  
17 Accounts in certain circumstances. Do you see that?  
18 A **Yes.**  
19 Q Have you previously been aware that there is a  
20 mandatory Segregated Account provision in the  
21 Wisconsin Statutes?  
22 MR. VAN SICKLEN: Your Honor, this seems  
23 like the wrong witness and no foundation and  
24 argumentative. If he wants to argue the standard in  
25 closing, he can.

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1 MR. GREENWALD: No. With all due  
2 respect, Your Honor, Mr. Dilweg is the Commissioner  
3 of Insurance. I'm asking about a basic understanding  
4 of the Segregated Account statute that gave rise to  
5 this proceeding.  
6 THE COURT: He's indicating that, and  
7 you're asking in the legal area, and he's indicated  
8 that he goes to general counsel for that  
9 interpretation.  
10 MR. GREENWALD: I'm asking about his  
11 awareness, and if he's not aware of these things,  
12 then he can say he's not aware of it.  
13 THE COURT: I think he's indicated that  
14 he's aware of it but these are matters that general  
15 counsel would be charged with.  
16 MR. OWEN: Can I add, he started his  
17 testimony asking him how he's guided his staff. He  
18 said the statutes bind us. So he's opened this area,  
19 he said the statutes bind him and guide his staff,  
20 and he's the interpreter of the statutes, and he  
21 signed the verified petitioner.  
22 THE COURT: It still doesn't change the  
23 nature as that relates to the question. He gets  
24 his -- he's testified that he relies lies on general  
25 counsel for those interpretations, which would seem

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1 appropriate, since he is not an attorney, he would be  
2 asking application of statutes from those whose job  
3 it is to give that information.  
4 MR. GREENWALD: Let me withdraw the  
5 question, Your Honor, and ask a different one that  
6 might get around this.  
7 Q Commissioner Dilweg what, if any, understanding do  
8 you have regarding statute 611.24?  
9 A **Simply that it deals with Segregated Accounts.**  
10 Q And do you have any understanding under what  
11 circumstances a mandatory Segregated Account is  
12 supposed to be set up?  
13 A **No, I haven't -- I recognize that, as I said in my  
14 testimony before, that we have the ability to  
15 establish Segregated Accounts across all lines of  
16 insurance. But I have not spent time on mandatory  
17 Segregated Accounts.**  
18 Q And are you familiar with the comments to the statute  
19 related to the adequacy of capital in the Segregated  
20 Account?  
21 A **That's a job for my financial bureau director.**  
22 Q To your knowledge will be general counsel be  
23 testifying here at this proceeding?  
24 A **We don't like to let him out of his office. To my  
25 knowledge he will not be.**

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1 Q Now, when you filed the verified petition in March  
2 and created the Segregated Account, the entirety of  
3 the RMBS policies were placed into the Segregated  
4 Account; is that your understanding?  
5 A **That's my understanding.**  
6 Q And then certain other policies, the LVM Bondholders  
7 and other policies were placed into the Segregated  
8 Account?  
9 A **That is correct.**  
10 Q And subsequent to the initial filing some additional  
11 student loan policies have been placed into the  
12 Segregated Account?  
13 A **That is correct.**  
14 Q Now, the assets related to the policies in the  
15 Segregated Account, however, have been left in the  
16 General Account; is that correct?  
17 A **Correct.**  
18 Q Are you familiar with the temporary restraining order  
19 that you filed along with your verified petition in  
20 March?  
21 A **The injunction, yes.**  
22 MR. GREENWALD: And perhaps just for  
23 ease, Cleo, if we could show the Commissioner Exhibit  
24 8 for identification. And we may or may not need to  
25 refer to it, but I thought this might make things

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1 move more quickly.

2 Q Now, is it your understanding, Commissioner, that the  
3 order for temporary injunctive relief that was  
4 entered by the Court at your request in March  
5 requires the policyholders in the Segregated Account  
6 to continue to pay premiums on their policies as they  
7 come due?

8 A **That is correct.**

9 Q And those premiums are paid into the General Account?

10 A **Correct.**

11 Q Policyholders in the Segregated Account are barred  
12 from setting off their premiums against unpaid  
13 claims?

14 MR. VAN SICKLEN: Again, we have the  
15 wrong witness for this, Your Honor. It's just  
16 arguing legal issues that he can argue in closing.

17 MR. GREENWALD: These are the contents  
18 of the document filed by the Commissioner, and these  
19 are facts, whether they have to pay a premium.

20 THE COURT: Can you answer that  
21 question?

22 THE WITNESS: Your Honor, it's my  
23 understanding that premiums continue to be paid. The  
24 relationship between the General and Segregated  
25 Account is clearly outlined in our document's ability

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1 for the Segregated Account to draw upon the assets of  
2 the General Account to make payments up to -- really  
3 to draw on the General Account up to a minimum of a  
4 hundred million dollars being left in the General  
5 Account, is the way that we structured it. So that's  
6 a relationship that I understand.

7 MR. GREENWALD:

8 Q As cash is available in the General Account over and  
9 above the statutory minimum of a hundred million  
10 dollars, is it OCI's intention to pay that cash on  
11 the surplus notes for principle and interest as it  
12 comes due?

13 A **My understanding is that's the health of the General  
14 Account overall, Your Honor, is to pay the surplus  
15 notes, to pay the claims if we are able to reach some  
16 larger commutations that we bring to you in a  
17 Segregated Account that will draw upon the assets of  
18 the General Account. So, you know, the health of the  
19 General Account is key to the repayment of the  
20 surplus notes.**

21 Q Now let me ask again though. The access to the  
22 assets of the General Account are through the secured  
23 note and the reinsurance agreement; is that correct?

24 A **That's my understanding.**

25 Q And both of them become inoperable to the extent that

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1 these hundred million dollar statutory surplus in the  
2 General Account is not met?

3 MR. VAN SICKLEN: I object. That  
4 mischaracterizes those obligations. The witness, Mr.  
5 Peterson, will be much more appropriate and we'll go  
6 through those types of issues with him. This is just  
7 asking a witness that has no foundation in this area.

8 THE COURT: Mr. Greenwald?

9 MR. GREENWALD: Well, the Commissioner  
10 who filed the verified petition and the TRO and  
11 worked diligently to put together this plan has  
12 testified that everything was done at his behest and  
13 with his guidance, if not with his daily interaction.  
14 And I'm asking for his understanding of these things.  
15 If the Commissioner doesn't understand, he can say  
16 that and we can move on. I don't think they're legal  
17 questions.

18 THE COURT: Did you understand it?

19 THE WITNESS: I mean, I think the  
20 question on the hundred million dollars, Your Honor,  
21 is if we see another stress in the economy and the  
22 General Account draws down to that level, we have  
23 stressed the General Account to have claims-paying  
24 resources to resolve this whole plan of  
25 rehabilitation and to provide continued coverage

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1 moving forward. And we recognize that if, for  
2 example, there's a double dip in the economy, the  
3 General Account could be stressed well beyond its  
4 means, as, you know, would many other insurance  
5 companies in this state and nation.

6 So that's always a concern of our  
7 office, and that's my broad understanding of, you  
8 know, the -- just as other insurance companies today  
9 would be stressed when the stock market hit 6,000 as  
10 they were over a year ago, the General Account could  
11 be stressed at the same level.

12 THE COURT: Proceed.

13 MR. GREENWALD:

14 Q Commissioner, you just referred to a stress case  
15 analysis that's been done on the General Account; is  
16 that correct?

17 A **We'll be continuing to stress the General Account  
18 when we move forward, just as we stressed the overall  
19 company in the past.**

20 Q And based on the current stress analysis, how much  
21 cash or capital needs to be left in the General  
22 Account over and above the statutory minimum to meet  
23 the stress case needs?

24 A **We are very comfortable with the 6.8 billion that's  
25 currently in the General Account.**

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1 Q Is there a minimum amount of capital needed to remain  
2 in the General Account to meet your stress case  
3 analysis?  
4 MR. VAN SICKLEN: I object. Again, it's  
5 the wrong witness for the this line of questioning.  
6 THE COURT: Well, can you answer it?  
7 It's speculative, of course, because we don't know  
8 what the circumstances would be to create the stress.  
9 So there's probably a lack of foundation for it. But  
10 can you answer it?  
11 THE WITNESS: I mean, I think we've put  
12 in our stress case in the disclosure document up to a  
13 billion dollars of losses in the General Account.  
14 And so that's contained in our disclosure documents,  
15 is my understanding. And that is a higher stress  
16 level than many of the expectations for the General  
17 Account at this time.  
18 MR. GREENWALD: And, Your Honor, I could  
19 explain why I'm asking these questions.  
20 THE COURT: Well, proceed.  
21 MR. GREENWALD: Okay.  
22 Q Is it your understanding that the current stress  
23 analysis requires no more than a billion dollars to  
24 meet the stress analysis that's been conducted by  
25 OCI?

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1 MR. VAN SICKLEN: Objection.  
2 Speculation.  
3 THE COURT: That is. He was indicating  
4 what they're comfortable at, what level of stress.  
5 MR. GREENWALD: I'll withdraw it Your  
6 Honor.  
7 Q Who prepared the Segregated Account approach for OCI?  
8 A **We've been working sincerely with Gordian Group and  
9 Jefferies, our financial advisors.**  
10 Q And what's the most recent stress analysis that  
11 they've done? When was it prepared?  
12 A **We developed -- I believe you'd have to ask Mr.  
13 Peterson, but we take each quarter. We have Q-3  
14 numbers recently that were put into a our stress  
15 cases.**  
16 Q And as you are sitting there today were you familiar  
17 with the contents of the stress analysis that Gordian  
18 and Jefferies have done for the Q-3?  
19 A **I have not been able to spend time on that.**  
20 Q Do you believe that Mr. Peterson would be familiar  
21 with those figures?  
22 A **Yes.**  
23 Q Commissioner, do you have any understanding of what  
24 the General Account's rights are to remediation  
25 claims with regard to policies in the Segregated

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1 Account?  
2 A **My rough understanding is that remediation would flow  
3 into the General Account, and then, as we discussed  
4 before, the Segregated Account draws from the General  
5 Account on an as-needed basis as we commute or pay  
6 out our -- or as we settle commutations of the  
7 Segregated Account or we pay out the cash that they  
8 split each month.**  
9 Q Can you explain to the Court, because remediation is  
10 a pretty specific word in this context, what is a  
11 remediation claim with regard to the Segregated  
12 Account policies, specifically the RMBS policies?  
13 A **I mean, my understanding of some of the remediation  
14 claims is as it relates to the current litigation  
15 surrounding Countrywide and Bank of America, just the  
16 fact scenarios on some of the mortgages that have  
17 been entered into, some of the actions that FHFA has  
18 taken against some of the mortgage loans that have  
19 been written and whether they're, you know,  
20 adequately represented. I mean, I've not spent that  
21 much time on remediation.**  
22 Q Are you aware that the order for injunctive relief in  
23 this case assigns those remediation claims to the  
24 General Account?  
25 MR. VAN SICKLEN: Objection. That

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1 mischaracterizes the document.  
2 MR. GREENWALD: I'll withdraw it.  
3 Q Let me just ask the question point blank. The  
4 policyholders in the Segregated Account for whom  
5 those policies -- Strike that.  
6 These remediation claims relate to RMBS  
7 trusts, correct?  
8 A **They're late RMBS.**  
9 Q And OCI has estimated that the value of the  
10 remediation claims is something in excess of  
11 \$2 billion?  
12 MR. VAN SICKLEN: Objection. That  
13 mischaracterizes the document submitted.  
14 MR. GREENWALD: I'm asking the  
15 Commissioner to testify.  
16 MR. VAN SICKLEN: You're  
17 mischaracterizing in your question the submissions.  
18 THE COURT: Do you have the document?  
19 MR. GREENWALD: Sure. Absolutely.  
20 Cleo, if you could show the Commissioner Exhibit 27.  
21 Actually it's probably just in front of you. Exhibit  
22 27 at page 61.  
23 Q Drawing your attention under C, loss reserves. We're  
24 now on Page 61 of Exhibit 27, the disclosure  
25 statements. It states that as of June 30, 2010,

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1 total statutory loss reserves associated with  
2 defaulted Segregated Account policies were  
3 approximately \$1.7 billion, net of \$2 billion of  
4 benefits related to projected R and W remediation  
5 recoveries relating to ongoing representation and  
6 warranty breaches in certain RMBS transactions,  
7 implying total policies claims associated with such  
8 policies of \$3.8 billion. Do you see that?

9 A **Ido.**

10 Q Am I understanding correctly that this sentence  
11 indicates that OCI has estimated that the value of  
12 the remediation claims is \$2 billion?

13 MR. VAN SICKLEN: That's the basis for  
14 my objection, Your Honor. This, again, is the wrong  
15 witness. But these are numbers from the company.  
16 And as made clear later in this document, there's  
17 four different scenarios with different assumptions  
18 about different levels of remediation benefits that  
19 Mr. Greenwald is mischaracterizing to this witness,  
20 who isn't familiar with this.

21 MR. GREENWALD: Your Honor, I'm asking  
22 Commissioner Dilweg to testify about his knowledge,  
23 not Mr. Van Sicklen's testimony, and if the  
24 Commissioner's not familiar with it, we can move on.  
25 To get testimony from counsel is really just not

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1 appropriate. My question --

2 MR. VAN SICKLEN: It's not appropriate  
3 to ask misleading questions of the nonfinancial  
4 person.

5 THE COURT: All right. Well, let's  
6 start with: Can you answer that?

7 THE WITNESS: I think we've always had  
8 our differences with the company on remediation, Your  
9 Honor. I think as we looked at the company in the  
10 past they've only -- the last time I looked at this  
11 issue they were only bringing in about \$60 million a  
12 year on remediation. So some of these estimates  
13 we've always had concerns with.

14 The last -- that's the last time I  
15 revisited this issue. I have haven't looked at this  
16 issue recently.

17 THE COURT: All right.

18 MR. GREENWALD:

19 Q Which of the figures in the disclosure statement, if  
20 you know, are representations by Ambac versus  
21 representations by OCI?

22 A **That would be something for Mr. Peterson.**

23 Q All right. You can put that document away now. Now,  
24 Commissioner, the Segregated Account was put into  
25 rehabilitation the day it was created; is that

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1 correct?

2 A **That's correct.**

3 Q So with OCI's approval the Board of Ambac created the  
4 Segregated Account on March 24, 2010?

5 A **That is correct.**

6 Q And at your direction OCI filed a verified petition  
7 for rehabilitation of the Segregated Account that  
8 same day?

9 A **As I recall.**

10 Q OCI understood that there was no plan to infuse new  
11 capital into the Segregated Account, correct?

12 A **Correct. If we would have had new capital for the  
13 company, that would have been great.**

14 Q But that was not your understanding of what would  
15 happen going forward, there would be no new capital  
16 for the Segregated Account?

17 A **No. We're looking at a static capital position for  
18 the company.**

19 Q And the goal is to run off the liabilities in the  
20 Segregated Account and terminate the Segregated  
21 Account thereafter, correct?

22 A **Correct.**

23 Q There was no plan to make the Segregated Account an  
24 independently viable insurer, was there?

25 A **It has no assets.**

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1 Q Now, you're aware that the proposed form of surplus  
2 notes on their face mature in the year 2020; is that  
3 correct?

4 A **That's my understanding.**

5 Q Do you also understand that the OCI has reserved its  
6 right to extend payment beyond the year 2020 on the  
7 surplus notes?

8 A **Or shorten them.**

9 Q And are you aware that the pro forma exhibits to the  
10 disclosure statement, Exhibits D through G, don't  
11 show any payments until the year 2050?

12 A **I know there were different scenarios laid out in the  
13 disclosure statement.**

14 Q Let me ask you the question that investors who are  
15 going to receive these surplus notes want to know.  
16 When is it likely that they're going to get paid? If  
17 it says 2020, what are the chances that they'll get  
18 paid by 2020?

19 A **I think my understanding of the approach is that each  
20 year we will be looking at the economy and the state  
21 of the company and either be paying out at a higher  
22 level, lower level, and when you get to 2020 we'll be  
23 doing the same analysis that we're doing today,  
24 working with the Court to understand where we sit.**

25 **The goal is to have paid these out by**

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1 2020, but I can't, if we face a 10-year recession  
2 that was faced in Japan, I would find that hard to  
3 reach. But this is purely what could happen. If we  
4 have an uptick in the economy, we could resolve these  
5 notes sooner. So it's -- The process here will be  
6 with the Insurance Commissioner's Office and the  
7 Court on how quickly or slowly these notes are  
8 repaid.  
9 Q Now, based on your understanding of what your staff  
10 has done, do you understand any estimate that's been  
11 made of the best estimate of when the surplus notes  
12 will be paid based on current understanding of  
13 capital and exposure?  
14 A We'll be looking at that in June of each year.  
15 Q As you're sitting here today has OCI undertaken to  
16 analyze what the best estimate is of likely payout  
17 under the surplus notes?  
18 A That's not something I've spent time on.  
19 Q And do you know whether Gordian or Jefferies have  
20 done that kind of calculation?  
21 A Like I said, it's not something I spent time on.  
22 Q Do you know if anyone has spent time on it?  
23 A I think my financial bureau director may or may not  
24 know. Like I said, it's not something I spent time  
25 on.

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1 Q And your financial bureau director is?  
2 A Roger Peterson.  
3 Q So he'll be testifying here tomorrow?  
4 A Right.  
5 Q What evidence, if any, was presented in support of  
6 the verified petition to demonstrate that the  
7 Segregated Account was adequately capitalized and had  
8 adequate surplus to pay all claims in the Segregated  
9 Account in cash as they came due?  
10 A There are no assets in the Segregated Account. They  
11 all reside in the General Account. So that  
12 relationship is -- you have \$6.8 billion currently in  
13 the General Account that are there for claims-paying  
14 on the Segregated and General Account.  
15 Q What proof was presented to the Court that the  
16 \$6.8 billion in claims-paying assets present adequate  
17 capital and surplus to pay the claims in the  
18 Segregated Account as they come due?  
19 A That's what we put the disclosure statement together  
20 for at this point. I haven't spent time on the  
21 various scenarios. That's something that my staff  
22 prepared.  
23 Q Well -- And let me just ask the question then. Are  
24 you aware where in any of the filings of this case it  
25 demonstrates that there's enough capital and surplus

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1 to pay the Segregated Account claims?  
2 MR. VAN SICKLEN: Objection.  
3 Argumentative.  
4 THE COURT: Sustained.  
5 MR. GREENWALD:  
6 Q And I won't ask detail questions about this, I just  
7 want to know, Exhibits D through G to the disclosure  
8 statement regarding the four scenarios, the details  
9 of those documents are not something that you're  
10 familiar with, correct?  
11 A I am not, correct.  
12 Q Are you aware that under three of the four scenarios  
13 it indicates that Segregated Account policyholders  
14 will never be paid in full on principle and interest  
15 on the surplus notes?  
16 A I'd have to review the document.  
17 Q Okay. Let me ask a more basic question. Are you  
18 aware that some of the pro forma financial statements  
19 that are part of your disclosure statement indicate  
20 that Segregated Account policyholders will never  
21 receive a hundred percent of the principle and  
22 interest on the surplus notes that they're given as  
23 part of the rehabilitation plan?  
24 MR. VAN SICKLEN: I object. The witness  
25 answered the same question before, that he didn't

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1 know.  
2 THE COURT: I'll sustain the objection.  
3 MR. GREENWALD:  
4 Q All right. We've already established that AFG is the  
5 parent company of AAC?  
6 A Correct.  
7 Q And that AFG is the sole shareholder of AAC?  
8 A Correct.  
9 Q Within the Wisconsin insurance statutory scheme of  
10 priority, equity holders are treated as junior to  
11 policyholders; is that correct?  
12 A Shareholders are treated beneath policyholders.  
13 Q And you understand that AFG's liquidity is almost  
14 entirely dependent on dividends that it receives from  
15 AAC?  
16 A Correct.  
17 Q There's no provision, however, in the Plan that  
18 prohibits AAC from making dividends to AFG, is there?  
19 A I mean, right now we have -- we have not made a  
20 payment to AFG in over 18 months, since we've been in  
21 a financially hazardous situation, so, you know, any  
22 dividend payment would be an extraordinary event and  
23 be reviewed by OCL.  
24 Q Let me ask this question: Is there any provision in  
25 the Plan that prohibits upstreaming dividend value to

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1 the parent shareholder prior to policyholders being  
2 paid in full on their claims?  
3 A Like I said, it's the duty of OCI to sequester the  
4 funds until the company's healthy, and then that  
5 becomes a different scenario.  
6 Q But if I were just looking at the plan documents, is  
7 there any provision in there to prohibit upstreaming  
8 of value to AFG prior to policyholders being paid?  
9 A I haven't reviewed the plan in that detail. I just  
10 know I'm constrained by my statutes.  
11 Q Are you familiar with the terms of the bank  
12 settlement agreement that was entered into earlier  
13 this year?  
14 A I'm familiar with the discussions and participated in  
15 them.  
16 Q Are you familiar with the provision that at least in  
17 the bank agreement allows for an upstreaming up to  
18 \$52 million in dividend annually from AAC to AFG?  
19 A That could very well be in there. I haven't seen it.  
20 Q And are you aware that the bank settlement agreement  
21 also allows for up to \$7.5 million to be upstreamed  
22 to pay for AFG's expenses on an annual basis?  
23 A I'm not aware of that.  
24 Q Okay. Under what circumstances do you believe it  
25 would be appropriate to allow AAC to upstream

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1 dividend to AFG?  
2 A As I viewed the rehabilitation, when you've shut down  
3 the Segregated Account and you have a healthy General  
4 Account, you know that you're no longer in a  
5 regulatory action, the company is running itself. I  
6 have no idea what the bankruptcy could look like.  
7 That would be purely speculative. But that's when  
8 you start examining the ability for AAC to dividend  
9 anything outside of the insurance company. At this  
10 point we're dealing with a financially hazardous  
11 company and trying sequester and protect assets.  
12 Q Have you or anyone at OCI spoken to AFG about under  
13 what circumstances they might get value out of AAC  
14 and up to the parent level?  
15 A No. We simply try and preserve the assets that we  
16 have.  
17 Q Has OCI gone back to look at potential past dividends  
18 to AFG to determine whether they were appropriate or  
19 in the alternative OCI could call them back as  
20 fraudulent transfers?  
21 A Not to my knowledge.  
22 Q When did OCI first become aware that AFG was  
23 contemplating the potential need to file for  
24 bankruptcy?  
25 A I believe, you know, it was about a year before the

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1 bankruptcy. I would have to check some of the SEC  
2 filings. They are always very good with informing us  
3 shortly before they made any SEC filings.  
4 Q Did OCI discuss the potential bankruptcy filing with  
5 AFG prior to the formation of the Segregated Account?  
6 A No. I mean, we have no control over bankruptcy or  
7 the holding company. So that did not -- that wasn't  
8 a part of our thinking.  
9 Q When did OCI first discuss the timing of an AFG  
10 bankruptcy filing with AFG or AAC?  
11 A Sometime between November 1st and November 8th when  
12 we came to the Court.  
13 Q Did OCI conduct any analysis prior to the formation  
14 of the Segregated Account in March of 2010 regarding  
15 what effect a bankruptcy filing by AFG would have on  
16 AAC?  
17 A Not to my knowledge.  
18 Q Who at OCI -- Strike that.  
19 I believe your testimony was that  
20 sometime in early November OCI began working with AAC  
21 and AFG to take steps to protect value for Ambac AAC,  
22 correct?  
23 A Correct.  
24 Q Who was principally responsible at OCI for those  
25 communications?

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1 A That was my deputy, Kim Shaul, our advisors, Foley &  
2 Lardner. And typically these things evolve through  
3 Dewey and Foley.  
4 Q Was Mr. Peterson involved in these communications?  
5 THE COURT: I don't know how good our  
6 insurance policy is, but don't kick back in your  
7 chair. I don't know how good the tender of documents  
8 is there back there to catch you.  
9 THE WITNESS: Thank you, Your Honor.  
10 MR. GREENWALD:  
11 Q So, Commissioner, was Mr. Peterson involved in the  
12 discussions in November regarding the potential  
13 bankruptcy filing?  
14 A Slightly. He was on vacation at the time.  
15 Q Ms. Matanle, do you know if she was involved?  
16 A I don't know.  
17 Q Or Mr. Barranco?  
18 A I don't know.  
19 Q Did OCI discuss putting AAC as a whole into  
20 rehabilitation if a prepackaged bankruptcy plan was  
21 filed?  
22 A Yes.  
23 Q And can you describe what those discussions were?  
24 A Once again, our concern was the bondholders reaching  
25 through the holding company to the insurance company

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1 and pulling assets out of it, and also it was  
2 preserving the tax refund from the IRS that had been  
3 placed there through the holding company. So if we  
4 had not been able to come to some agreement, we would  
5 have been forced to examine the possibility of full  
6 rehabilitation.  
7 Q Did you -- and who did you speak to about the  
8 prospect of filing a full rehabilitation of AAC? Who  
9 did you talk to about that?  
10 A We had video conferences leading up to the weekend.  
11 Monday was November 8th, so those days leading up to  
12 November 8th.  
13 Q And, I'm sorry, who at AFG and AAC?  
14 A We had initially Mike Callan, David Wallis, Kevin  
15 Doyle, and others. I don't recall exactly who all.  
16 And the Dewey attorneys. And then our attorneys.  
17 And then you had at one point because of some of our  
18 discussions you had Kevin Doyle and you did not have  
19 David Wallis and Mike Callan.  
20 Q The -- Ultimately did OCI enter into a term sheet in  
21 principle with the ad hoc committee, creditors and  
22 with AFG?  
23 A Yeah. I believe the nonbinding term sheet was filed  
24 in bankruptcy court subsequent to our November 8th  
25 filing and rehabilitation. That was the sequence

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1 that we discussed with the holding company.  
2 MR. GREENWALD: Cleo, could you --  
3 Q Commissioner, I want bring to your attention, put in  
4 front of you what's previously been marked for  
5 identification as Exhibit 38, which is Mr. Wallis'  
6 affidavit with attachments, one of which was a letter  
7 from you, Commissioner Dilweg. Commissioner, do you  
8 have that document in front of you?  
9 A I do.  
10 Q I believe your testimony was that the affidavit  
11 itself is something that you had not reviewed before?  
12 A That is correct.  
13 Q If you could turn your attention to Exhibit B. Is  
14 there a tab there? About halfway through.  
15 A I'm just making sure it's B. Okay.  
16 Q Okay? Do you see a November 7, 2010, letter?  
17 A Right.  
18 Q And is that your signature on the second page of the  
19 letter?  
20 A This is the letter we sent. And it is my signature.  
21 Q Okay. So Exhibit B to Exhibit 38 for identification  
22 is a letter from you to the members of the Board of  
23 Directors of Ambac Assurance Corporation on  
24 November 7, 2010; is that correct?  
25 A That is correct.

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1 Q And attached to it is what is labeled Terms of  
2 Transaction, and it has three pages, I believe?  
3 A That is correct.  
4 Q And can you describe what that document is.  
5 A This is the nonbinding term sheet that we discussed.  
6 Q And who actually prepared the term sheet, do you  
7 know?  
8 A Foley & Lardner prepared the term sheet itself in  
9 discussions with the other represented attorneys.  
10 Q When did OCI first have contact with the ad hoc  
11 creditors committee regarding the potential AFG  
12 bankruptcy?  
13 A Sometime during that week of November 2nd.  
14 Q Now, for example, we look at the term sheet; this is  
15 a document that you reviewed before you sent it to  
16 the Board of Ambac Assurance?  
17 A I reviewed various versions of it.  
18 Q And were you familiar in general with the terms of  
19 transaction that were being proposed?  
20 A In general.  
21 Q If you look at Item No. 1 in the Terms of  
22 Transaction, it states that AFG retains ownership of  
23 AAC; do you see that?  
24 A I do.  
25 Q And why was that a term that OCI was willing to

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1 approve?  
2 A Nothing here is approved. And this wasn't an issue  
3 that I spent time on.  
4 Q Well, let me ask the question: Is this term sheet a  
5 term sheet that OCI would approve?  
6 A There's still a number of moving parts in this  
7 sheet between now and the end of the year.  
8 Q Are there any -- well, are there any terms in this  
9 Terms of Transaction document prepared by OCI's  
10 lawyers that OCI currently does not approve of?  
11 A These are all areas that we'll have discussions over  
12 the next few months.  
13 Q Okay. Based on the Terms of Transactions, the  
14 intention as stated here is that AFG will retain  
15 ownership of Ambac Assurance?  
16 A That's outlined in this nonbinding term sheet.  
17 Q Is there a reason why preferred equity was not  
18 provided to the policyholders in the Segregated  
19 Account to provide them for the potential losses on  
20 their claims?  
21 A I mean, once again, this goes back to the  
22 relationship between the General and Segregated  
23 Account. There are no assets in the Segregated  
24 Account. It's the General Account that provides the  
25 assets to the Segregated Account. So my focus in

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1 **these discussions was much more on the tax refund and**  
2 **the shareholder liabilities.**  
3 Q If you look at -- or focus on some of the terms  
4 here -- if you look at the second page of the Terms  
5 of Transaction No. 4, it says that until  
6 December 31, 2010, the Rehabilitator shall not seek an  
7 injunction from the rehabilitation court enjoining  
8 AFG action in respect of the NOLs, and AFG shall not  
9 seek to take any action in regards to the NOLs  
10 between AFG and AAC. Do you see that?  
11 A **I do.**  
12 Q Why did OCI agreement to restrain itself from filing  
13 any action prior to the end of the year?  
14 A **Like I said, this is a nonbinding term sheet that**  
15 **shapes the discussions between now and the end of the**  
16 **year.**  
17 Q The terms of the -- if we look down here at Item 7,  
18 this relates to the NOLs, is it your understanding  
19 that currently there are approximately \$7.3 billion  
20 in net operating losses available to Ambac?  
21 A **I've heard the term 7 billion.**  
22 Q Let's work with 7 billion then. And that the vast  
23 majority of the \$7 billion of net losses were  
24 generated by losses at the Ambac Assurance level?  
25 A **That's my understood.**

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1 Q Based on this term sheet which was filed about with  
2 the bankruptcy court last Monday, we look at 7-A, it  
3 states the amount of NOLs available for use by AAC  
4 which shall be no greater than \$3.5 billion; do you  
5 see that?  
6 A **What page are you on?**  
7 Q Page 2 of the terms and transaction, Paragraph 7-A.  
8 A **Um-hum.**  
9 Q Was it your understanding that the -- that this term  
10 sheet would limit AAC's access to NOLs to  
11 \$3.5 billion?  
12 A **It's a nonbinding term sheet where we're going to**  
13 **have discussions on the value of the NOLs. The NOLs**  
14 **are very difficult to preserve and -- so that this is**  
15 **the start of our discussions.**  
16 Q If you look at B, it says the amount paid by AAC to  
17 AFG for use of the NOLs; do you see that?  
18 A **Um-hum.**  
19 Q Under what circumstances would it be appropriate for  
20 Ambac Assurance to pay value to AFG for use of the  
21 NOLs generated by AAC?  
22 A **Like I said, these are discussions that we haven't**  
23 **had at this point.**  
24 Q Is it your -- Strike that.  
25 Is it your expectation that some of the

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1 NOLs that have been generated by AAC's losses will be  
2 provided to the parent AFG?  
3 A **It's my understanding there's a lot of moving parts**  
4 **as it relates to NOLs and ownership. And so how**  
5 **those are decided by the bankruptcy court and over**  
6 **the last few months is so wide open it's not clear to**  
7 **me, and we never use the value of the NOLs in our**  
8 **stress cases for the General Account. So it's not**  
9 **clear to me, you know, where these discussions will**  
10 **lead by the end of December.**  
11 Q And let me ask this question. Do you understand  
12 based on what theory or authority AAC would be  
13 required to pay AFG for use of NOLs?  
14 MR. VAN SICKLEN: Objection.  
15 Foundation. We're getting into extremely complicated  
16 tax questions that unless Mr. Greenwald can show this  
17 witness has some foundation to answer.  
18 THE COURT: Do you have an understanding  
19 to answer that question?  
20 THE WITNESS: You know, I rely on my  
21 attorneys for tax advice, Your Honor. So, you know,  
22 you're starting to get out of my league on NOLs here.  
23 THE COURT: All right.  
24 MR. GREENWALD: I'll withdraw. Let me  
25 ask a more broad question, then I'll move on.

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1 Q In general, it's true, isn't it, that the Terms of  
2 Transactions would allow for AFG to use approximately  
3 half of the NOLs of the parent company?  
4 A **The discussion here is outlining the value. It's the**  
5 **start of a discussion on what value the NOLs have.**  
6 **We'll be back in front of this Court with our**  
7 **understanding of what we feel they are. So at this**  
8 **point, you know, this is the start of a conversation.**  
9 Q All right. I want to turn your attention to a  
10 completely different subject then.  
11 I want to ask you about the SEC  
12 No-Action Letter that was requested and received. Do  
13 you understand that the Plan requires that OCI obtain  
14 a No-Action Letter from the SEC before the Plan can  
15 become effective?  
16 A **Yes.**  
17 Q And can you describe just in general what a No-Action  
18 Letter is?  
19 A **No. It's simply -- my understanding is it adds more**  
20 **value to the surplus notes.**  
21 Q Well, then, with the answer no, I'm going to go on to  
22 other things.  
23 A **All right.**  
24 Q If that's all right.  
25 Let me ask: Are you aware of what

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1 information was disclosed to the SEC with regard to  
2 its request for a No-Action Letter?  
3 A I realize there were some notification requirements  
4 that they be in paper instead of electronically.  
5 That's about the extent on some of the detail that I  
6 know.  
7 Q That was my mistake for not being clear. My question  
8 is -- Well, let me just ask the specific questions.  
9 Do you know whether OCI informed the SEC  
10 that AFG filed for bankruptcy on November 8th, last  
11 month?  
12 A I know the SEC was aware of the bankruptcy.  
13 Q Did you have any direct contact with the SEC  
14 personally?  
15 A Yes.  
16 Q Okay. And who did you could have contact with?  
17 A The Commissioner, Luis Aguilar.  
18 Q And when did you speak to her?  
19 A Him.  
20 Q Him, I'm sorry.  
21 A I spoke with him last week, I believe Thursday.  
22 Q And on Thursday when you spoke to the Commissioner of  
23 the SEC --  
24 A Yes.  
25 Q -- what did you say and what did he say?

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1 A I simply asked him to look at our No-Action Letter  
2 that we had filed six weeks ago and wanted resolution  
3 one way or the other prior to our court hearing.  
4 Q And what did he tell you?  
5 A He said he'd look into it and he'd have to talk to  
6 his staff.  
7 Q Did he know -- Did he know that the No-Action Letter  
8 was even in his office?  
9 A No.  
10 Q Do you know if anyone at OCI informed the SEC about  
11 the modifications to the TRO that were filed in this  
12 proceeding last Monday?  
13 A Repeat the question.  
14 Q Sure. And we're talking about an order for  
15 injunctive relief. Last Monday, I think,  
16 Commissioner, personally you came in with Mr. Van  
17 Sicklen and asked for the Court to enter an ex parte  
18 modification to the order for injunctive relief,  
19 correct?  
20 A Correct.  
21 Q Do you know whether the SEC was informed of that  
22 action prior to their issuing a No-Action Letter?  
23 A At that point -- No, I don't. I don't know if they  
24 were informed of that.  
25 Q And do you know whether OCI informed the SEC --

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1 Well, strike that. No, actually not.  
2 Did OCI inform the SEC that OCI intended  
3 to submit additional disclosures to parties in  
4 interest on November 12, 2010?  
5 MR. VAN SICKLEN: I object. I mean,  
6 this witness has already said he has no familiarity  
7 with what was disclosed. This is just argumentative.  
8 THE COURT: Do you have any knowledge?  
9 THE WITNESS: I mean, my involvement,  
10 Your Honor, really was on Thursday with the SEC, and  
11 I've explained the extent of my involvement.  
12 THE COURT: All right. I think he's  
13 answered it then.  
14 MR. GREENWALD: Thank you, Your Honor.  
15 Q Commissioner, are you familiar with the release  
16 provisions of the proposed Plan or should I ask  
17 somebody else?  
18 A As far as once the Plan is fully operational?  
19 Q Once the plan is fully operational. Are you familiar  
20 with the releases that are imposed?  
21 A Somewhat. Oh, the releases to the policyholders?  
22 Q Correct.  
23 A No. No. That would be --  
24 Q Well, the releases the policyholders make if they  
25 submit a claim under Section 8.01 of the Plan. Maybe

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1 I'll pull it up for you.  
2 A I misunderstood your question. I understand how the  
3 Plan will move forward and provide payment. But I'd  
4 be happy to look at the section for you.  
5 Q Sure. Let's just pull up Exhibit 26 for  
6 identification, and we're going to go to Section  
7 8.01. So, Commissioner, we're at Page 26 and 27 of  
8 the Plan for Rehabilitation marked for identification  
9 as Exhibit 26. And if I could ask you to read 8.01  
10 and then let me know when you're done. And the first  
11 question I'm going to ask you is if you're familiar  
12 with the terms contained in here.  
13 MR. VAN SICKLEN: And, counsel, while  
14 the Commissioner is reading that, are you going to  
15 call his attention to the changes that are submitted  
16 in the order that clarify that we filed on Friday.  
17 MR. GREENWALD: Sounds like redirect. I  
18 didn't get a red-line version of it?  
19 THE WITNESS: I'm familiar with the  
20 terms. It's not an area that I spent time.  
21 MR. GREENWALD:  
22 Q Let me ask in general -- and these are going to be  
23 pretty high-level issues that I don't think are  
24 affected by the amendments to the plan that we  
25 received on Friday.

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1 THE COURT: -- can you.

2 MR. GREENWALD: Yes, I'm sorry. I was  
3 admonished earlier not to speak too closely, and now  
4 I'm trying to speak at the right distance.

5 Q Are you aware in general that a Segregated Account  
6 policyholder when they submit a claim in order to  
7 receive payment has to release any claims they might  
8 have against AFG?

9 MR. VAN SICKLEN: I think that  
10 mischaracterizes what's in the order, so I would  
11 object to that. The language of these documents  
12 speak for themselves. Counsel can argue from it.

13 THE WITNESS: I guess I'd prefer to see  
14 the full red-line version of the document. I'm happy  
15 to look at this at this time. But --

16 MR. GREENWALD:

17 Q Well, are you aware that this generally releases  
18 claims against AAC affiliates and shareholders?

19 A **Like I said, I haven't spent time on this issue.**

20 Q Okay. Do you know who, is it your lawyers or is  
21 there anyone who will be testifying here at this  
22 hearing who actually is familiar with this provision?

23 A **I mean, this is -- our attorneys work on this. Roger**

24 **Peterson could speak to it. And there's a variety of**  
25 **people as the company will be speaking.**

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1 Q I'll withhold the questions then about this for Mr.

2 Peterson and we'll see if we make some movement  
3 there. I think you can put that document aside now.

4 Commissioner, I know that you testified  
5 that your goal as the son of a judge and somebody  
6 who's been in politics for a while that transparency  
7 is very important to you, correct?

8 A **That's correct.**

9 Q Are you aware of the objectors' motions in this case  
10 seeking additional information from time to time from  
11 the OCI?

12 A **I'm aware there have been objections.**

13 Q Are you aware that OCI objected to all requests filed  
14 in this Court for additional information?

15 A **That is my understanding.**

16 Q And did they do that at your direction?

17 A **At my consultation.**

18 Q In fact, OCI's refused to provide any of the  
19 information that was specifically requested in May of  
20 this year?

21 A **I don't know of specific requests or specific**  
22 **information requested.**

23 Q OCI's been working, as you testified, for more than  
24 two-and-a-half years on the Ambac situation, correct?

25 A **That is correct.**

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1 Q And OCI's reviewed a wealth of information and  
2 interacted with Ambac personnel on a daily basis for  
3 the last couple of years?

4 A **That is correct.**

5 Q And yet at OCI's request this hearing was scheduled  
6 for only five weeks after the Plan was proposed; is  
7 that correct?

8 A **That's correct.**

9 Q Before I get there, I want to follow up on these  
10 questions. In this case the policyholders who have  
11 received disclosures from OCI have received what OCI  
12 has decided to give to them, correct?

13 A **That is correct.**

14 Q And to the extent that the policyholders have asked  
15 for any information over and above what OCI's  
16 provided, OCI has determined that they should not  
17 receive that information?

18 A **Correct.**

19 THE COURT: What about your website Q  
20 and A's?

21 THE WITNESS: Well, I think, you know,  
22 Your Honor, the issue is you have very narrow  
23 interests trying to understand the company as a  
24 whole, and we have to balance between all the  
25 policyholders. And, you're correct, we're responding

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1 to policyholders in 48 hours on a daily basis. But  
2 to open up the company's books --

3 THE COURT: All right.

4 THE WITNESS: -- to every discovery  
5 opportunity would just bog down these proceedings and  
6 create a serious cash drain.

7 THE COURT: Thank you.

8 MR. GREENWALD:

9 Q One question on that point. In terms of narrow  
10 interests, you're aware that there are large groups  
11 of policyholders in the Segregated Account who have  
12 appeared to object to the Plan?

13 MR. VAN SICKLEN: Your Honor, I think  
14 this is getting into argument. We've had the  
15 discovery arguments over and over. This just seems  
16 to be --

17 MR. GREENWALD: Two questions, Your  
18 Honor, just two. In fact, let me reduce it to one,  
19 and I'll withdraw the last one.

20 Q Are you aware of any policyholder group or individual  
21 in the Segregated Account who's appeared on the  
22 record to support the plan that you've proposed?

23 A **Yes. We've had briefs filed from the commercial ABS**  
24 **Policyholders.**

25 Q In this case to support the plan?

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1 A In the past, back in March. I believe we have briefs  
2 from Dunkin' Donuts, Sonic.  
3 Q Let me make sure my question is clear. Are there any  
4 policyholders in the Segregated Account who have  
5 filed in this court to support the plan?  
6 A That I don't know.  
7 Q Sonic and the others are in the General Account,  
8 correct?  
9 A There's -- I believe there's about 13,000  
10 policyholders in the General Account and about 700  
11 policyholders in the Segregated Account.  
12 Q Okay.  
13 MR. GREENWALD: Cleo, if we could show  
14 the Commissioner what's been marked for  
15 identification as Objectors' Exhibit 40, which is the  
16 amendment 2 the disclosure statement accompanying  
17 plan of rehabilitation that was filed late in the day  
18 last Friday.  
19 Q And I'll draw your attention to Page 6, the  
20 liquidation analysis section. Have you seen this  
21 document before?  
22 A No.  
23 Q I'm sorry?  
24 A No.  
25 Q Do you know who prepared the liquidation analysis

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1 reflected in Exhibit 40?  
2 A I believe our financial advisors did.  
3 Q Who?  
4 A Our -- Jefferies and Gordian, our financial advisors.  
5 Q Do you know when Jefferies or Gordian first prepared  
6 a liquidation analysis?  
7 A No.  
8 Q Do you know when the liquidation analysis reflected  
9 in Exhibit 40 was prepared? For the record it was  
10 filed last Friday; but when was it prepared?  
11 A As I said, I don't know.  
12 Q Have you had discussions with anyone about the  
13 preparation of the liquidation analysis in Exhibit  
14 40?  
15 A No. This was, I mean, I balance a lot of things, and  
16 I haven't spent time on this issue.  
17 Q Have you ever focused on the issue of what the  
18 liquidation value is of the policies in the  
19 Segregated Account?  
20 A It really, you know, if you go back to what we filed  
21 in March, what we filed in October, you know, when  
22 you're facing \$13 to \$16 billion in mark-to-market  
23 damage with the banks, spending time on detailed  
24 liquidation analysis was not something I did. It  
25 might have been done. It may have been done a year

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1 ago, it may have been done two years ago. But it was  
2 pretty clear to me that this was not an area for  
3 myself to spend time on when, you know, an outright  
4 liquidation in the early part of 2010 would have  
5 caused that damage to the company. So I can't  
6 answer -- I mean, obviously it's been done here. But  
7 I don't know when it's been done.  
8 Q The bank settlement agreement was consummated in June  
9 of 2010?  
10 A It was agreed to in March of 2010 and then finalized  
11 June 7th maybe.  
12 Q Has anyone at OCI done a -- Strike that. Has anyone  
13 at OCI done a liquidation analysis that takes into  
14 account that the CDS bank settlement is now in place  
15 and takes into account its terms for a liquidation  
16 analysis?  
17 A This isn't something I've spent time on.  
18 Q Do you know if Mr. Peterson's spending time on this?  
19 A I don't.  
20 Q Okay. We can put that aside.  
21 Let me ask this question, which is also  
22 something that policyholders in the Segregated  
23 Account want to understand. In the event that Ambac  
24 as a whole someday is put into a rehabilitation or  
25 liquidation; how would the claims of the Segregated

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1 Account surplus notes be treated compared to the  
2 General Account policyholder claims?  
3 MR. VAN SICKLEN: Objection.  
4 Foundation.  
5 THE COURT: And speculation. Sustained.  
6 MR. GREENWALD:  
7 Q Do you understand what the rights of the Segregated  
8 Account per vis-a-vis the General Account in the  
9 event of a rehabilitation or liquidation of AAC?  
10 A This is -- You would have both accounts in  
11 rehabilitation.  
12 Q Right. And if that were to happen, would the  
13 Segregated Account policyholders be treated pari  
14 passu with the General Account policyholders?  
15 MR. VAN SICKLEN: Objection.  
16 Foundation. And calls for speculation.  
17 THE COURT: It does. Sustain the  
18 objection.  
19 MR. GREENWALD:  
20 Q In the event that Ambac as a whole doesn't do  
21 rehabilitation or liquidation, how is it based on the  
22 Plan documents that all policyholders will be treated  
23 fairly and equally?  
24 A I -- mean.  
25 MR. VAN SICKLEN: I think it's the

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1 same -- Wait, wait, Commissioner. Again, I would  
2 object on speculation. It's just rephrasing the same  
3 question three times.

4 THE COURT: It is. And he's done a very  
5 skillful job on it. Sustain the objection.

6 MR. GREENWALD: Of restating the same  
7 question.

8 THE COURT: Reframing it, yes.

9 MR. GREENWALD: Well, was that  
10 sustained, the objection to the question?

11 THE COURT: I'm sustaining the objection  
12 to the question, yes. Speculation and foundation.

13 BY MR. GREENWALD:

14 Q So basic question here, Commissioner, you started out  
15 your testimony today staying that the fundamental  
16 bedrock of what you do as a Commissioner is make sure  
17 policyholders are treated fairly and equally; is that  
18 right?

19 A Equitably.

20 Q Fairly and equitably. What is your understanding --  
21 Strike that. How does the Plan that you've proposed  
22 ensure that Segregated Account policyholders are  
23 treated fairly and equitably in the event that Ambac  
24 as a whole fails?

25 MR. VAN SICKLEN: Same objection. It's

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1 again speculating about what the circumstances would  
2 be at some future event and what OCI that future  
3 event might do and how they would treat these things.

4 THE COURT: It is speculation. So much  
5 would depend on what happened. As he's also  
6 testified.

7 MR. GREENWALD: Well, let me ask the  
8 very simplest question.

9 Q Is there anything in the plan that addresses what  
10 happens in the event of a delinquency proceeding at  
11 the General Account level?

12 A You know, I referred to this earlier, Your Honor, if  
13 there were to face a double-dip economy, we would be  
14 back in here with you looking at options for the  
15 General Account rehabilitation. We'd probably be in  
16 here with you on a number other companies that might  
17 be stressed throughout the nation. So there are a  
18 number of regulatory options that I would be only  
19 speculating on what the approach would be.

20 BY MR. GREENWALD:

21 Q Commissioner, if in the event that there is a double  
22 dip or some other event in the economy that requires  
23 the delinquency proceeding of Ambac as a whole, would  
24 it be your intention to seek to modify this plan to  
25 make sure that all policyholders at Ambac are treated

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1 fairly and equitably?

2 MR. VAN SICKLEN: Same objection.

3 THE COURT: Sustained.

4 MR. GREENWALD: All right. Well, let's  
5 move on then.

6 Q You testified that it was your expectation that this  
7 Plan is approved that payment would begin to be made  
8 on claims in the Segregated Account by 2011?

9 A That is correct.

10 Q What's the current intention, the soonest the  
11 payments could be made after the Plan is approved?

12 A That's something that I don't know all the  
13 interactions of our discussions with the DTC and how  
14 surplus notes are paid out. I think Roger could  
15 answer that. But you know, I understand at a high  
16 level what we've contemplated and the monthly  
17 payments that would be going out the door on cash  
18 note split. But the details of the DTC trustee  
19 interaction is something I haven't spent time on.

20 Q So regarding how quickly after approval payments will  
21 actually be made is something Mr. Peterson would be  
22 familiar with?

23 A That's correct.

24 Q All right.

25 MR. GREENWALD: Well, with that, Your

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1 Honor, and your indulgence at my attempts to get a  
2 question articulated differently, I'm completed with  
3 my questioning. But I do not promise that there  
4 aren't other questions from other objectors.

5 THE COURT: Well, it's about 5 to 5.  
6 It's about time to wrap up for the day. How many  
7 more objectors wanted to question? One, two, three,  
8 four, five, six. All right. I think we better  
9 recess for the day and come back tomorrow.

10 (Proceedings adjourned at 4:55 p.m.)

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1 STATE OF WISCONSIN)

2 ss.)

3 COUNTY OF DANE)

4

5 REPORTER'S CERTIFICATE.

6 We, ELLEN W. WEISLING and JENNY POIRIOR,

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14

15 Dated this 15th day of November, 2010.

16

17 Jenny Poirior,  
18 Fifth Judicial District Court Reporter

19

20 Ellen W. Weisling,  
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