

1 STATE OF WISCONSIN CIRCUIT COURT DANE COUNTY
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 3 In the Matter of the
 4 Rehabilitation of:
 5 SEGREGATED ACCOUNT OF AMBAC
 6 ASSURANCE CORPORATION
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 8 Case No. 10-CV-1576
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PRESIDING: HONORABLE WILLIAM D. JOHNSTON

PROCEEDINGS: Confirmation Hearing

DATE: November 19, 2010

A P P E A R A N C E S

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 and Lloyds TSB Bank plc.

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P R O C E E D I N G S

(Following proceedings reported
 by Ellen Weisling.)

THE COURT: All right. Let's call the
 Circuit Court for Dane County into session in the
 matter 10 CV 1576. It is the Matter of the
 Rehabilitation of the Segregated Account of Ambac
 Assurance Corporation. And for today's proceeding --
 Let's see. Our court officer fled. I wanted to get
 the mic out for appearances. Well, we'll do it the
 old-fashioned way. Let take appearances for today's
 proceedings.

MR. VAN SICKLEN: Good morning, Your
 Honor. As has been the case throughout the week,
 it's Mike Van Sicklen. And today my partner, Jeff
 Simmons on behalf of the Rehabilitator and the
 Wisconsin Office of the Commissioner of Insurance.

MR. STOLPER: Good morning, Your Honor.
 Daniel Stolper of Stafford Rosenbaum on behalf of
 Ambac Assurance Corporation. And with me is Richard
 Reintaler, William Primps, Pete Ivanick, Henry
 Ricardo and Emily Saffitz of Dewey & LeBoeuf. And
 from Ambac is Cathleen Matanle, Managing Director,
 and David Barranco, Managing Director.

THE COURT: All right. Rich, would you

1 get ready with the mic for those who are going to be
2 noting their appearance from behind the railing.

3 MR. NOWICKI: Your Honor, for the RMBS
4 Policyholders, Brian Nowicki of Reinhart, Boerner;
5 David Greenwald of Jenner & Block; and, Your Honor,
6 earlier this week we submitted pro hac vice materials
7 to admit Mike Brody of Jenner & Block to appear on
8 behalf of the RMBS Policyholders. I don't believe
9 the Order has yet been signed, but I wanted to
10 confirm that this wouldn't be an issue with his
11 admission pro hac vice.

12 THE COURT: I thought I had signed that
13 and sent it in.

14 THE CLERK: Yes.

15 THE COURT: It's been sent in to the
16 clerk.

17 MR. NOWICKI: Okay. Thank you, Your
18 Honor.

19 THE COURT: All right. We have
20 everybody back there? All right. Others wishing to
21 appear, if you'd just come up to the officer, and
22 he'll give you hand mic, and you can note your
23 appearance on that.

24 MR. WHITMER: Good morning, Your Honor.
25 Steven Whitmer, Locke, Lord, Bissell & Liddell on

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1 behalf of Wells Fargo as Trustee for the LVM
2 Bondholders. Also here we have Steve Morgan from the
3 firm Murphy Desmond.

4 MR. WELSH: Good morning, Your Honor.
5 Tom Welsh of Orrick Herrington on behalf of Depfa
6 Bank, joined by my co-counsel, Gregory Lyons of
7 O'Neil, Cannon. Thank you.

8 MR. DEVORE: Good morning, Your Honor.
9 Andrew Devore of Ropes & Gray, and with me is Anne
10 Bensky of Garvey, McNeil & Associates, representing
11 One State Street, LLC.

12 MR. JOHNSON: Good morning, Your Honor.
13 Michael Johnson from Alston & Bird. I'm hear today
14 on behalf of Bank of America, Wells Fargo and
15 Wilmington Trust in their capacity as Trustees for
16 Certain Securitization Trusts.

17 MR. LUCEY: Your Honor, Paul Lucey of
18 Michael, Best & Friedrich, appearing on behalf of
19 Deutsche Bank National Trust Company, Deutsche Bank
20 Trust Company of Americas, and U.S. Bank National
21 Association as Trustees Under Certain Securitization
22 Trusts.

23 MR. PYPFER: Good morning, Your Honor.
24 Tom Pypfer of Whyte, Hirschboeck & Dudek, representing
25 Countrywide Home Loan servicing, LP, and Countrywide

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1 Home Loans, Incorporated.

2 MR. OWEN: Jim Owen with McCarthy,
3 Leonard & Kaemmerer, representing Lloyds Bank and ALL
4 Student Loan.

5 THE COURT: Do we have everyone now?
6 Did Mr. Bentley note his appearance? Or is he having
7 a bad hat day? He's not here today. All right. On
8 the telephone?

9 MR. ROSS HOOPER: Good morning, Your
10 Honor. Thomas Ross Hooper of Seward & Kissel, LLP,
11 on behalf of the Bank of New York Mellon as Trustee,
12 Indenture Trustee or Collateral Agent Directly or
13 Through its Affiliates for the Benefit of Holders and
14 Secured Parties of Certain Mortgage-Backed and Other
15 Asset-Backed Securities, Collateralized Loan
16 Obligations, and Collateralized Debt Obligations.

17 THE COURT: Does the reporter need
18 anyone to repeat their name?

19 REPORTER: I have them, thank you.

20 THE COURT: We had left off yesterday
21 with Ms. Matanle, who -- I assume you're going to
22 call her back and continue today.

23 MR. OWEN: Yes, Your Honor.

24 THE COURT: All right. Would you come
25 back to the witness chair, please, and we'll have you

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1 take the witness oath for today's proceedings.

2 **CATHLEEN MATANLE,**

3 having been first duly sworn,
4 was examined and testified as follows:

5 THE COURT: All right. Be seated. And
6 for purposes of this day's proceedings, state your
7 name, please.

8 THE WITNESS: Cathleen Matanle.

9 THE COURT: All right. Let's see, where
10 were we on this? Were we on cross?

11 MR. OWEN: Yes, Your Honor, it was
12 cross.

13 THE COURT: Who's on? Mr. Owen?

14 MR. OWEN: Yes, Your Honor.

15 **CROSS-EXAMINATION:**

16 BY MR. OWEN:

17 Q Good morning, Ms. Matanle. Jim Owen with Lloyds
18 Bank, ALL Student Loan. You're familiar with those
19 policies?

20 A **Yes, I am.**

21 Q You filed your second affidavit, which is Exhibit 21,
22 I believe. Can you get that exhibit in front of you.
23 And you recall in that exhibit making various
24 statements about these specific policies, do you not?

25 A **Yes.**

8

1 Q And if I refer you to Page 5 Paragraph 13, is it fair
2 to say that you made statements concerning the
3 current shortfall on the Lloyds policy?
4 A **Yes. As of this point in time.**
5 Q Did you make any specific findings or statements with
6 respect to the projected losses at the maturity date
7 of the Lloyds policy?
8 A **When we speak about losses, we generally speak about**
9 **losses in present value terms, so it's -- at the**
10 **point in time is today, but it's referring to stream**
11 **of losses that are then discounted.**
12 Q Okay.
13 A **I would have to reread this to see what I actually**
14 **said, but that's the normal parlance for speaking**
15 **about losses.**
16 Q Okay. Can you reread it and see if you made a
17 specific finding as to the projected loss at the
18 maturity date of the Lloyds policy.
19 A **I'm in Paragraph 20. This is where the discussion**
20 **starts.**
21 Q Okay. Please tell me the specific reference to which
22 you refer.
23 A **About halfway down, the sentence that starts,**
24 **"Indeed, the principle amount of the student loan**
25 **assets in the ALL Trust is now lower than the**

9

1 **principle amount of the outstanding ALL bonds."**
2 Q That's talking about today's current shortfall.
3 Isn't it true that the Lloyds policy, they're not
4 entitled to make a claim until the maturity date?
5 MR. SIMMONS: Object to the form of the
6 question, Your Honor. Vague. Compound.
7 THE COURT: Well, do you know? Do you
8 know the answer to that? Do you know about the
9 policies? Or their terms?
10 THE WITNESS: As far as I know, you
11 can't make a claim until the maturity date. I don't
12 know if there are any other events of default that
13 could precipitate. I'm not aware of any.
14 BY MR. OWEN:
15 Q So that would be in June of 2013, before the maturity
16 date, before there would be an actual loss on the
17 policy, correct? You were talking here about a
18 shortfall that is current?
19 A **Yes, that's true.**
20 Q Okay. So I'll repeat my question. Did you make a
21 statement in your affidavit as to the material
22 projected loss on the Lloyds policy at the maturity
23 date?
24 A **I'll keep reading. I don't see a specific sentence**
25 **that says exactly what you're looking for.**

10

1 Q Okay. Is it true that what happens in the next
2 several years is -- with respect to the ability for
3 Lloyds to make as a holder and as a beneficiary under
4 what you refer to in this as the ALL bonds is
5 dependent on what happens with the interest rates?
6 A **Yes. It --**
7 THE COURT: Just a moment. Had you
8 answered?
9 THE WITNESS: Yes. That's a
10 contributing factor for sure.
11 BY MR. OWEN:
12 Q And can you show -- can you look at Exhibit 27 in the
13 binder there.
14 A **It's not in this binder.**
15 Q Yeah, she's bringing it to you. Sorry. Thank you.
16 A **Okay.**
17 Q On behalf -- On Page Roman Numeral II, which is the
18 third page of that exhibit, is it fair to say that in
19 the Disclosure Statement with reference to any type
20 of future warranties or assurances that the
21 Rehabilitator is making that in the final paragraph
22 midway through the Rehabilitator made the following
23 statement: Although the Rehabilitator believes that
24 any such forward-looking statements are reasonable,
25 no assurance can be given that such expectations will

11

1 prove to have been correct. Do you see that
2 statement?
3 A **Yes, I do.**
4 Q Is it your understanding that the Rehabilitator does
5 not affirm or assure that anything concerning future
6 interest rates with respect to any of this -- of the
7 statements made in the Disclosure Statement?
8 MR. SIMMONS: Your Honor, I object.
9 Foundation. Is he asking her to speak on behalf of
10 the Rehabilitator?
11 THE COURT: Yes, I was wondering that.
12 Lay a foundation for her ability to answer that
13 question.
14 MR. OWEN: Okay.
15 Q Were you -- Was Ambac at all involved in the future
16 projections of the losses and future losses with
17 respect to the Ambac policies that are contained in
18 the Disclosure Statement?
19 A **We provided our view of loss to the -- OCI and its**
20 **advisors, and then they look that to whatever**
21 **conclusions they chose to take them to.**
22 Q Were you involved in selection of the potential
23 fluctuation of the interest rates that are involved
24 in the projection of those losses?
25 A **I was not personally involved in that particular**

12

1 **assumption.**
2 Q Okay. Can you look on Page 62. Was Ambac at all
3 involved in the base-case loss estimates and the
4 stress-case loss estimates with respect to the
5 student loan policies?
6 A **No.**
7 Q Okay. Do you have any understanding as to why there
8 was a fluctuation or -- with respect to the base-case
9 loss estimates and the stress-case loss estimates
10 with respect to the student loan policies? Why the
11 numbers that are listed are 298 million for the
12 base-case loss estimate and 1.1 billion for the
13 stress-case loss estimates for the student loan
14 policies? Do you know why there would be that amount
15 of volatility?
16 A **They had different assumptions in the stress case,**
17 **but I don't know what those assumptions might have**
18 **been.**
19 Q You were not involved in that?
20 A **No.**
21 THE COURT: What was your answer?
22 THE WITNESS: No.
23 BY MR. OWEN:
24 Q You stated in Paragraph 18 of your affidavit, again,
25 Exhibit 21, that the Lloyds Bank bonds bore interest

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1 rates higher than the interest rates that were in
2 effect prior to their acquisition by the banks?
3 MR. SIMMONS: Mr. Owen, what page and
4 paragraph of the affidavit?
5 MR. OWEN: Page 7, Paragraph 18.
6 THE WITNESS: I'm there.
7 BY MR. OWEN:
8 Q Are you aware whether those bank bond rates were also
9 variable interest rates?
10 A **I don't recall.**
11 Q Do you know whether the default rates that were --
12 that you mention later in the affidavit, that same
13 paragraph, whether -- that you say both Depfa and
14 Lloyds Bank would have had a contractual right to
15 increase the bank bond rates payable on the ALL bonds
16 for which they are the respective liquidity providers
17 to such higher default rates. Do you know whether
18 Lloyds was ever given the opportunity to forbear that
19 right to increase the bank bond rates to a higher
20 default rates by OCI or Ambac?
21 A **I don't know.**
22 Q You say in Paragraph 19 the bank bonds are subject to
23 accelerated principle payments. Lloyds Bank has the
24 right to have its bonds redeemed in full in 2013.
25 Do you know whether that accelerated

14

1 principle payment that was in effect prior to the
2 rehabilitation -- prior to March 24th of 2010?
3 A **This provision to accelerate into 2013, is that--**
4 Q And actually the execution of that accelerated
5 principle payment, whether that happened in 2008,
6 long before the Plan?
7 A **It was in effect, this provision was in effect before**
8 **March 24th.**
9 Q Thank you. Without access to the policy and loss
10 data related to the other policies in the General
11 Account, is there any method by which my client, ALL
12 and Lloyds, can determine if the alleged material
13 projected impairment on their policy is comparable to
14 the other policies in the General Account?
15 THE COURT: If you know.
16 THE WITNESS: I don't think I know. We
17 publish our loss numbers in an aggregate rather than
18 at a policy level.
19 BY MR. OWEN:
20 Q So they would not be able to determine whether their
21 policies and the projected losses on their policy was
22 comparable to another policy in the General Account,
23 could they? If it's only in the aggregate, if the
24 loss information for the General Account is only in
25 the aggregate.

15

1 A **That's correct.**
2 Q Thank you. I know that you've mentioned that there
3 was confidentiality provisions with respect to the
4 policy-by-policy information on losses in the General
5 Account, but would you not be able to provide -- to
6 provide that policy-by-policy loss information with
7 redacting the name and policy number for the people
8 in the General Account, just provide the
9 policy-by-policy loss information, with that
10 information redacted? And do you know what I mean,
11 by redacted?
12 A **Yes, I do.**
13 Q So wouldn't that information be able to be provided,
14 just the data?
15 A **It's frequently possible to look through even**
16 **redacted data and perhaps understand what the**
17 **underlying credit is.**
18 Q So I've been asked, representing liquidators, to
19 prove policy-by-policy data to other outside sources
20 where I've been asked to redact for confidentiality
21 purposes the names of the policyholder.
22 MR. SIMMONS: Your Honor, is there a
23 question?
24 MR. OWEN: Is that not possible here?
25 Would that not have been possible here?

16

1 THE COURT: All right. What's your
2 objection?
3 MR. SIMMONS: Your Honor, well,
4 objection. I guess it's foundation. He's asking
5 her -- I think he's asking her what's in his mind?
6 MR. OWEN: No.
7 MR. SIMMONS: No. I'm just not clear
8 what the question is here.
9 THE COURT: Well, it's confusing because
10 it's terribly compound and it had and "is it not" in
11 there as a conjunctive at one point. Could you start
12 over and rephrase it and try to be more specific as
13 to what the question is for the witness?
14 MR. OWEN: Okay.
15 Q Does the -- Ambac carry the policy-by-policy loss
16 data for the General Account?
17 A Yes.
18 Q Could you not redact the -- what you consider to be
19 the confidential names of the policyholders on that
20 data and still make at that data available?
21 A Yes. A list of Policy X, Y, Z with associated
22 numbers next to them? Yes.
23 Q Thank you. Are you aware of any significant
24 differences between the contractual triggers in the
25 General Account transactions compared to the

17

1 contractual triggers in the Segregated Account
2 transactions?
3 MR. SIMMONS: Object. Overbroad, Your
4 Honor. We're talking about scores of transactions
5 here.
6 THE COURT: Could you try to narrow that
7 down?
8 MR. OWEN: If she can tell me, Your
9 Honor. I'm -- right now they've alleged in their
10 petition and in their affidavits that there were
11 contractual triggers in the General Account that
12 necessitated them not to put those accounts in the --
13 or those policies in the Segregated Account.
14 THE COURT: So your question is what
15 though?
16 MR. OWEN: Is what were the differences
17 between the contractual triggers that they allege
18 prevented them from putting the policies in the
19 General Account into the Segregated Account.
20 THE COURT: Now you're asking, Mr. Owen
21 you're asking what OCI did. First of all, you've got
22 to establish that she knows or has a basis for what
23 OCI did, and then perhaps she is qualified to answer
24 that.
25 MR. OWEN: Well, first, Your Honor, I

18

1 think she knows what policies are still in the
2 General Account and she knows what policies are in
3 the Segregated Account. She's testified to that.
4 I'm trying to find out now if, since she knows what
5 policies are in the two accounts, does she know, and
6 since we have no basis and no information on that,
7 does she know.
8 THE COURT: Well, it's your
9 editorializing that make your questions interesting.
10 Just ask the question. When you say things like, "We
11 know this or don't know that"; just simply ask the
12 question.
13 MR. OWEN: Okay. I will ask the
14 question again.
15 Q Are you aware of any significant differences between
16 the triggers in the General Account transactions and
17 the contractual triggers in the Segregated Account
18 transactions?
19 A It's a very broad question. There are lots of
20 triggers in many of the deals and policies in both
21 the General Account and the Segregated Account have
22 triggers.
23 Q Are there any significant differences that you can
24 outline for me to give us a better idea of why those
25 contractual triggers are different? And if you know

19

1 and you can delineate those differences for us, maybe
2 you can say there is A, B, and C differences.
3 A I couldn't do that. You'd have to do it a
4 deal-by-deal analysis.
5 MR. OWEN: Give me a moment, Your Honor.
6 I think I might be finished. Thank you very much,
7 ma'am.
8 THE WITNESS: Thank you.
9 MR. OWEN: No further questions, Your
10 Honor.
11 THE COURT: All right. Next questioner,
12 Objector. Mr. Welsh?
13 **CROSS-EXAMINATION:**
14 BY MR. WELSH:
15 Q Good morning, Ms. Matanle. My name's Tom Welsh. I
16 represent Depfa Bank. Do you recognize them as one
17 of your policyholders?
18 A Yes, I do.
19 Q Okay. Just a couple of quick questions. You're
20 aware that there's -- there has been roughly
21 \$13 million in loss claims paid out of General
22 Account policies, correct?
23 A Yes.
24 Q What are those policies? Who's the issuer?
25 A We wouldn't disclose on a deal-by-deal basis where

20

1 we're paying claims.
2 Q Will you disclose the geographic location of the
3 issuer?
4 MR. SIMMONS: Your Honor, object on
5 confidentiality grounds.
6 THE COURT: Sustained.
7 BY MR. WELSH:
8 Q Do you know who the issuer is on those policies?
9 A Yes, I do.
10 MR. SIMMONS: Same objection.
11 BY MR. WELSH:
12 Q Well, for the record, Your Honor, let me just ask the
13 blunt question, which is: Are those issuers in
14 Wisconsin?
15 MR. SIMMONS: Your Honor, object.
16 THE WITNESS: No.
17 THE COURT: They're not?
18 THE WITNESS: No.
19 THE COURT: All right. They're not.
20 BY MR. WELSH:
21 Q That was all I needed on that one. In the context of
22 other lines of insurance there is a concept known as
23 lapse; are you familiar with that term?
24 A How do you spell it?
25 Q The concept is that certain policies that are

21

1 expected to go for a certain duration lapse,
2 terminate, by virtue of things like cancellation,
3 failure to pay premiums, or a voluntarily surrender
4 by the policyholder. Is that a concept that you're
5 familiar with in the insurance context?
6 A Yes. Probably as a consumer more than in this sense.
7 Q Okay. Is there a similar term that's used in the
8 financial guaranty industry?
9 A Not that I'm aware of.
10 Q But Ambac does track policies that are terminated,
11 for example, by virtue of refundings of bonds?
12 A Yes.
13 Q And by refundings, can you explain what that term
14 generally means?
15 A A refunding is generally when an issuer decides to
16 exercise its right to call the bonds.
17 Q And after Ambac started experiencing financial
18 difficulties, the rate of refundings of bond deals,
19 particularly variable rate bond deals, accelerated
20 significantly, did it not?
21 A Yes, it did.
22 Q And is that a statistic that you're continuing to
23 track with respect to the General Account?
24 A Yes. And we need to update our books and records
25 when our policies are no longer in effect.

22

1 Q Do you make any projections of what levels of lapse
2 or termination will occur in the future on policies
3 that are in the General Account?
4 A I suppose we do. There's UPR associated with those
5 policies, so we try to take a view on what our
6 future -- if it's an installment pay deal what our
7 future installment premiums might be.
8 Q Can you quickly just describe UPR for the Court.
9 A Oh, god. I don't know even what it stands for.
10 Unearned Premium --
11 Q Unearned Premium Reserve, perhaps?
12 A Yes.
13 Q Are you aware of specific projections that Ambac may
14 have made with respect to what percentage of the
15 policies in the General Account are expected to
16 terminate or lapse due to refundings prior to their
17 natural expiration date?
18 A No.
19 Q Do you have any sense of what percentage of policies
20 have already lapsed due to refundings?
21 A In percentage terms, no. It's been a substantial
22 amount of will runoff.
23 Q And by runoff you mean policies that are
24 terminating --
25 A Yes.

23

1 Q -- in one way or another? Do you know what the total
2 policy count is today?
3 MR. SIMMONS: Your Honor, object on
4 confidentiality grounds here.
5 THE COURT: Well, that's your -- are you
6 using that? Is that --
7 THE WITNESS: I think he means just the
8 total number of policies that we have in the book of
9 business --
10 MR. WELSH: Right.
11 THE WITNESS: -- is that correct?
12 THE COURT: All right.
13 THE WITNESS: You know, I think the
14 number is 13,000, thereabouts. I don't keep track of
15 it as a statistic. We report it.
16 BY MR. WELSH:
17 Q And do you remember what it was in March?
18 A No.
19 Q Quick question about the surplus notes. The surplus
20 notes bear interest at 5.1 percent, correct, so Ambac
21 is going to have an interest expense associated with
22 the issuance of those notes, correct?
23 A Yes.
24 Q And so, generally speaking, the longer you wait to
25 issue the notes, the lower the interest expense will

24

1 be, correct?
2 A Yes.
3 Q I think my last question was covered by someone else.
4 So I'm all set. Thank you.
5 MR. WELSH: Your Honor, that's all I
6 have. Thank you.
7 THE COURT: All right. Next
8 questioner.
9 **CROSS-EXAMINATION:**
10 BY MR. DEVORE:
11 Q Good morning, Ms. Matanle. My name is Andrew Devore,
12 and I represent One State Street. I take it your
13 business address is one State Street, New York, New
14 York?
15 A Yes.
16 Q And you are you a employee of the General Account or
17 the Segregated Account?
18 A The General Account.
19 Q Are you aware of any employees at the One State
20 Street Building that are employees of the Segregated
21 Account?
22 A There are none.
23 Q Now, were you involved with any of the discussions
24 regarding the allocation of the One State Street
25 lease liability to the Segregated Account?

25

1 A No.
2 Q Okay. Now, were you present yesterday when Mr.
3 Peterson testified that there were expressions of
4 interest to purchase policies from Ambac?
5 A Can you be more specific?
6 Q Mr. Peterson testified yesterday that there are
7 expressions of interest to purchase policies from
8 Ambac as part of either a rehabilitation or a
9 liquidation; do you recall that testimony?
10 A I still don't understand the context of it. I'm
11 sorry.
12 Q Mr. Peterson testified yesterday that third-party
13 insurers, you know, other companies, expressed
14 interest to purchase policies issued by Ambac; do you
15 recall that?
16 A You mean our existing policies?
17 Q Exactly.
18 A Yes. I recall that testimony.
19 Q Do you have any knowledge of those expressions of
20 interest?
21 A No. Really, I think the inquiry -- I think those
22 expressions of interest were made to the OCI.
23 Certainly not to me.
24 Q So you don't have personal knowledge of those?
25 A No.

26

1 MR. DEVORE: That's all I have.
2 THE COURT: All right. Next questioner?
3 No one else? Mr. Johnson, you're usually up here.
4 MR. JOHNSON: No, Your Honor. Thank
5 you.
6 THE COURT: Mr. Bentley's hiding in
7 back. Were you going to question?
8 MR. BENTLEY: No, I'm not, Your Honor.
9 THE COURT: All right. Anyone on the
10 phone wish to question this witness?
11 MR. ROSS HOOPER: No, thank you, Your
12 Honor.
13 THE COURT: All right. I guess we're
14 back to redirect.
15 MR. SIMMONS: No, Your Honor.
16 THE COURT: Then you may step down.
17 Call your next witness.
18 MR. VAN SICKLEN: Your Honor, the
19 Rehabilitator has no more affirmative witnesses. We
20 would reserve the right to call any rebuttal
21 witnesses following the Objectors, I believe, one
22 live witness.
23 THE COURT: All right. Who's going
24 to -- Mr. Greenwald, you're going to be calling
25 for --

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1 MR. GREENWALD: I will. But, Your
2 Honor, there are two motions I would like to raise
3 now the OCI's case has been closed.
4 MR. VAN SICKLEN: It hasn't been closed.
5 THE COURT: It hasn't been closed.
6 MR. GREENWALD: With the reservation to
7 submit rebuttal evidence.
8 At this time I'd like to move to strike
9 certain documents that have been admitted in evidence
10 on -- over the objections of Objectors previously.
11 Specifically with regard to all versions of the
12 Disclosure Statement and its Amendments and
13 Supplements.
14 We move to strike on the basis that they
15 are hearsay. I'll be supplementing in just a few
16 minutes of a brief -- we're getting copies made right
17 now -- but the motion is as follows:
18 The OCI, as a litigant, specially
19 created a set of documents that this Court has
20 received in evidence. The authorship of the
21 documents remains unclear; in addition to OCI's
22 staff, OCI's external financial and legal advisors
23 drafted major portions of the documents. In fact,
24 many of the documents are not even signed by OCI but
25 by its external lawyers and were created solely for

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1 use in this proceeding.

2 The public records exception for the
3 hearsay rule cannot lawfully be stretched to
4 encompass these hearsay documents. The RMBS
5 Policyholders therefore move to strike the Disclosure
6 Statement accompanying the Plan of Rehabilitation,
7 including the versions designated as Objectors'
8 Exhibits 27 and 28 and to strike all written
9 Supplements and Amendments, which would include the
10 versions designated as Objectors' Exhibits 31, 40 and
11 41 as inadmissible hearsay.

12 In the alternative, the RMBS
13 Policyholders request that judicial notice be limited
14 to the fact that OCI posted these documents to its
15 website and not for any other purpose.

16 On October 8th, 2010, OCI filed its
17 Disclosure Statement. The Disclosure Statement was
18 first amended on October 21, 2010. Most recently, on
19 November 12, 2010, on the very eve of this hearing on
20 the Plan, OCI added, among other items, a Liquidation
21 Analysis and written responses to written questions
22 proposed by Objectors to the proposed Plan of
23 Rehabilitation.

24 Over the weekend immediately prior to
25 the commencement of the confirmation hearings, OCI

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1 entered into proposed stipulations with certain
2 parties, not the RMBS Policyholders. Pursuant to
3 those stipulations the parties stipulated that the
4 Disclosure Statement and Supplements shall be deemed
5 admitted in evidence.

6 The RMBS policyholders filed a motion in
7 limine to exclude the Disclosure Statement and
8 Supplements before the start of the hearing on
9 November 15th. Over the RMBS's objections the Court
10 received the Disclosure Statement and Supplements
11 into evidence, holding that the Court could take
12 judicial notice of the Court's own records and that
13 the material was admissible under the public records
14 exceptions to the hearsay rule.

15 With respect, Your Honor, the RMBS
16 Policyholders move that the Court should strike the
17 Disclosure Statement and Supplements on the basis of
18 hearsay. Although OCI claims that the disclosure and
19 the Supplements are not being offered for the truth
20 of the statements, that is exactly why they are being
21 offered. And I would direct the Court's attention to
22 Mr. Van Sicklen's comments at page 85 of the first
23 day's transcript. OCI and its witnesses have relied
24 on the financial projections and Liquidation Analysis
25 in those duties as substantive evidence to support

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1 the decisions OCI has made. Indeed, OCI contends
2 that it offered the Disclosure Statement and
3 Supplements to, quote, "show the thoughtfulness and
4 rational basis for the OCI's decision," close quote.
5 First day transcript at Page 89.

6 Moreover, OCI requests that the Court,
7 quote, consider the Disclosure Statement and
8 Supplements part of the record for all purposes for
9 the Court to consider." First day at 73.

10 The Court cannot determine that OCI had
11 a rational basis for its decision without considering
12 the materials for their truth. OCI intends to use
13 the documents to carry its burden that the Plan
14 should be confirmed.

15 Because they are out-of-court
16 declarations of unknown witnesses, the materials are
17 hearsay. And I would cite to the Wisconsin Statutes
18 Section 908.01(3). That provision provides that
19 records, reports, statements, and data compilations
20 of public offices are exempted from the hearsay rule
21 if they set forth, A, the activities of the office or
22 agency; B, matters observed pursuant to duty imposed
23 by law; or, C, in civil cases and against the State
24 in criminal cases factual findings resulting from an
25 investigation made pursuant to authority granted by

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1 law. However, even if the records, reports,
2 statements, or data compilations meet one of these
3 requirements, the public records exception does not
4 apply if, quote, the sources of information or other
5 circumstances indicate a lack of trustworthiness,
6 quote close.

7 Here Disclosure Statement and
8 Supplements do not satisfy any of the criteria for
9 the public record exception. Moreover, the
10 circumstances of their production in connection with
11 pending litigation indicate a lack of
12 trustworthiness. OCI was not acting pursuant to a
13 duty by preparing the documents. The public records
14 exception includes material created by public
15 officials when they are acting pursuant to a duty
16 imposed by law. In this case OCI has expressly
17 disavowed that it was required to prepare these
18 documents. During the confirmation hearing OCI
19 argued the Wisconsin Statutes Section 645.33, quote,
20 there's no requirement that we provide any type of
21 information. That was the first day hearing on
22 November 15th at Page 85.

23 I'd also draw the Court's attention to
24 the Disclosure Statement at (i). The Disclosure
25 Statement and Supplements were not prepared by a

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1 public agency or office.

2 Wisconsin Statute 908.03(8) cannot apply

3 in this case because it only applies when a public
4 agency or office creates the documents at issue by a
5 person acting in his or her official capacity. And I
6 would cite to *In re Guardianship of R.S.* 162 Wis.2d
7 197. And in just a few moments we'll have that
8 authority before the Court by citation.

9 Here it is unclear whether it was OCI
10 external attorneys, external financial advisors
11 and/or AAC, not OCI or some other public agency, that
12 authored the Disclosure Statement and Supplements.
13 OCI's external counsel wrote that the Disclosure
14 Statement was, quote, prepared with great effort by
15 OCI and its advisors with able assistance from the
16 Management Services Provider, which is AAC.
17 Moreover, all the Amendments and Supplements in the
18 Disclosure Statement were signed by and presumably
19 written by OCI's external counsel. Indeed, OCI
20 conceded that its external financial advisors
21 prepared the Liquidation Analysis -- draw the Court's
22 attention to the first day hearing on Page 242 -- and
23 that the Rehabilitator's November 12 supplement to
24 the Disclosure Statement, quote, doesn't refer to
25 where it comes from, close quote. And that would be

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1 the first day transcript at Page 249. Thus OCI has
2 failed to prove and the evidence refutes that the
3 documents are even documents of OCI.

4 The pending litigation indicates that
5 the documents lack trustworthiness. The public
6 record exception is premised upon the belief in the
7 impartially and integrity of public officials;
8 however, when litigation is pending or anticipated,
9 quote, questions about the reliability, close quote,
10 of the records arise. And I would cite to *Staskal v.*
11 *Symons Corp.*, 2005 WI App 216 and also *State vs.*
12 *Williams*, 253 Wis.2d 99.

13 In this case the Disclosure Statement
14 and Supplements were all filed on or after October 8,
15 2010, more than six months after OCI petitioned for
16 rehabilitation on March 24, 2010. During those six
17 months extensive litigation has ensued, many parties
18 have filed motions objecting to OCI's action, and the
19 Court's orders affirming OCI actions are pending on
20 appeal.

21 OCI's and the Court's interpretation of
22 Wisconsin Statute 908.03 violates public policy.
23 Under that interpretation -- the Court's
24 interpretation and OCI's -- any public official who
25 is a party in a pending proceeding could introduce

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1 into evidence any document that was created during
2 the litigation as a public document, including
3 attorney work product created during the pendency of
4 the litigation. OCI now seeks to introduce documents
5 written by its outside litigation counsel. It is
6 doubtful that the Wisconsin Legislature intended to
7 give these public officials carte blanche to freely
8 introduce any self-serving materials for their truth.

9 Even if the Disclosure Statement and the
10 Supplements qualify under the public records
11 exception, OCI has not proven that hearsay contained
12 within those materials are also exempted. If a
13 public record contains multiple levels of hearsay, as
14 it does here, each layer of hearsay must qualify
15 under an exception to the hearsay rule. I would cite
16 to Wisconsin Statutes Section 908.05 and also to
17 *State vs. Gillis*, 173 Wis.2d 101.

18 For the Disclosure Statement and
19 Supplements to be admissible, OCI must prove that a
20 hearsay exception is applicable for both the document
21 itself and each layer of hearsay in the document.
22 OCI has not done so here. Therefore the documents
23 should be stricken.

24 The Disclosure Statement and Supplements
25 should not be admitted for their truth by judicial

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1 notice. The Disclosure Statements and Supplements
2 cannot be judicially noticed for the truth of the
3 matters therein. Wisconsin Statutes Section 902.01
4 provides that a Court may judicially notice a fact
5 that's, quote, generally known within the territorial
6 jurisdiction of the trial Court, close quote, or,
7 quote, capable of accurate and ready determination by
8 resort to sources whose accuracy cannot reasonably be
9 questioned, close quote.

10 Judicial notice is often used to
11 introduce known facts, such as weather reports or
12 scientific facts. Where as, here the accuracy of
13 OCI's materials are, quote, subject to reasonable
14 dispute, close quote, the Court can only take
15 judicial notice of the existence of the documents,
16 not the disputed facts within the documents. And I
17 would cite to *In re Termination of Parental Rights of*
18 *Brittany Ann H.*, 2000 Wis. 28.

19 For the reasons set forth in my oral
20 comments and in the brief that I'll be providing to
21 the Court in just a few moments, the RMBS
22 Policyholders respectfully request that the Court
23 strike all versions of the Disclosure Statement and
24 the Supplements and Amendments from evidence, or, in
25 the alternative, limit any judicial notice to the

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1 fact at that OCI posted these documents to its
2 website and not for any other purpose.

3 That concludes my remarks. Thank you,
4 Your Honor.

5 THE COURT: All right. Mr. Van
6 Sicklen -- well, just a moment. Mr. Devore, you're
7 going to join in?

8 MR. DEVORE: Yes. For the record, One
9 State Street joins in its entirety the motion stated
10 just moments ago on the record by the RMBS
11 Policyholders. And we add that we also move to
12 strike the Disclosure Statement Amendment Number 2,
13 the Liquidation Analysis, that was filed this past
14 Friday on the grounds stated by Mr. Greenwald and
15 additionally based on judicial estoppel.

16 On the September 9th hearing date
17 counsel for OCI stated that a liquidation would
18 provide a tremendous value for shareholders. We
19 established yesterday through the testimony of Mr.
20 Peterson that that is, in fact, not the case under
21 the Liquidation Analysis that was submitted by OCI.

22 And I would cite to the Court to *Rosek*
23 *v. Intrafinancial Corp.*, 699 N.W.2d 54. It's a
24 Wisconsin Supreme Court decision of 2005, stating
25 that judicial estoppel precludes a party from

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1 asserting one position in a legal proceeding and then
2 subsequently asserting an inconsistent position.

3 THE COURT: All right. Were you
4 speaking for all Objectors? Apparently not. All
5 right. Mr. Bentley.

6 MR. BENTLEY: Good morning, Your Honor.
7 Philip Bentley for the LVM Bondholders. First, Your
8 Honor, just as a housekeeping matter, I'd like to
9 enter my appearance. I apologize for my lateness
10 this morning. And I appreciate the concern that I
11 understand the Court expressed, and to answer the
12 Court's inquiry, I was not having a bad hat day, and,
13 in fact, today promises to be a good hat day.

14 More substantively Your Honor, I join
15 Mr. Greenwald's motion with one limited exception,
16 and that is we do not object to and we do not seek to
17 strike Exhibits 51 through 55. Those are five
18 exhibits that relate to certain issues relevant to
19 the LVM Bondholders. Other than that I do join the
20 motion.

21 MR. WHITMER: Good morning, Your Honor.
22 Steven Whitmer on behalf of Wells Fargo Trustee for
23 the LVM Bondholders. Wells Fargo also joins the
24 motion presented by the RMBS Policyholders with the
25 same carve-out that Mr. Bentley just explained to the

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1 Court.

2 THE COURT: All right. Any other
3 Objectors wish to speak to the motion?

4 MR. GREENWALD: And, Your Honor, if I
5 may -- David Greenwald -- I do believe that the rule
6 is that one objection -- one Objector speaks for all.
7 I wouldn't want, unless Your Honor believes that
8 everyone needs to step up now, I don't think it's
9 necessary.

10 THE COURT: Well, I see them standing
11 up, so I don't know whether I was interested to see
12 if somebody was going to come up and oppose your
13 motion. I realize the rule that one speaks for all,
14 but everybody's standing up, so I didn't know if they
15 had some other point.

16 MR. GREENWALD: I think with regard to
17 LVM and Wells Fargo the carve-out certainly is
18 appropriate. There was a question from the back
19 about whether they would be required to step forward
20 to join in the objection, and my understanding is
21 it's not a requirement.

22 THE COURT: My understanding is that's
23 the way we've been operating, that you speak and
24 they're all bound by you.

25 MR. GREENWALD: And if I could, Your

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1 Honor, I'd like to -- and I apologize for not having
2 this before, my paralegal has just brought in the
3 copies. I could bring one to the bench. I've
4 already given one to Mr. Van Sicklen. I'd like to
5 give one to AAC just to do that.

6 THE COURT: All right. Bring it up. An
7 does Ambac have it?

8 MR. GREENWALD: They will in one second.

9 THE COURT: All right. I believe then
10 that is the motion now of the Objectors. Everybody's
11 joined in. And Mr. Van Sicklen -- Well, the person
12 on the telephone, did you want to be heard on this?
13 Apparently not. All right. Mr. Van Sicklen?

14 MR. VAN SICKLEN: I'll try to be brief,
15 Your Honor. I believe Mr. Greenwald has read his
16 brief essentially into the record.

17 Mr. Greenwald, who does not represent
18 any policyholders in this proceeding, still wants to
19 turn this into an inflexible, interminable lawsuit
20 rather than the prompt, efficient regulatory
21 proceeding that the statutes call for. Mr. Peterson
22 through two days of cross-examination demonstrated
23 the foundation for these documents, his and OCI's
24 participation and familiarity with their preparation
25 and content. He testified about his extensive role

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1 in preparing and overseeing that process on behalf of
2 OCI and its advisors. He spent the better part of
3 two days answering all of these different Objectors,
4 multiple overlapping questions and never ducked an
5 issue about these documents or answering questions
6 about their content.

7 We're back to sort of arguing the same
8 issues we've been arguing, you know, back with the
9 scheduling order this past Monday and the like.
10 These are, by statute and practice in Wisconsin,
11 flexible proceedings. This Court has broad
12 discretion about the types of evidence it wants to
13 admit and for what purposes. Mr. Welsh on behalf of
14 Depfa just established with Ms. Matanle the
15 disadvantages of delay in terms of getting monies
16 out, interest payments and the like started. They
17 want to start this process over, and it's not clear
18 to me what possible benefit it would be to real
19 policyholders to delay interminably getting the
20 payment process started again. But perhaps Mr.
21 Greenwald's clients don't care because they're not
22 policyholders.

23 But, again, I think the reasons that we
24 discussed on Monday and the Court's decision is well
25 grounded in law, and that it's up to you as the trier

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1 of fact to decide what weight to give the materials.

2 And, again, we need to look back at the
3 statute. There's no requirement that we provide any
4 disclosure materials. We've gone out of our way to
5 provide a wealth of information to people, balancing
6 the confidentiality concerns of the company and OCI
7 and the like and went to great lengths to organize
8 it. We solicited questions from every one of the
9 Objectors. We answered every one of their written
10 questions. We've met extensively with them
11 individually, including Mr. Greenwald and his
12 clients, on confidential basis to try to inform each
13 other's decision making and narrow differences of
14 opinion.

15 There's no basis, I submit, in these
16 nonpolicyholders' motion to strike the materials that
17 have been put forth to help promote an understanding
18 of OCI's decision making and the rational basis for
19 it. Either -- You know, it's been put forth both for
20 the benefit of the interested parties and for Your
21 Honor's benefit.

22 And, again, we didn't put Mr. Peterson
23 up there to have him say he had no idea about these
24 materials or he wasn't prepared to answer any
25 questions. I don't remember a single real fact

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1 question on that he ducked on the basis that he
2 didn't stand behind the materials and their content
3 and the like. You know, yes, they have some standard
4 disclaimers about the company having a different
5 view, but there's no disclaimer about OCI standing
6 behind those materials.

7 As he testified and as the Commissioner
8 testified, they're the best effort by OCI to provide
9 the most accurate, comprehensive material possible.
10 And if we're going to turn this into every statement
11 has to go through sort of the litigious types of test
12 that Mr. Greenwald's advocating to get through
13 hearsay, we literally would have to call the
14 Commissioner, as Mr. Peterson indicated, multiples
15 members of the OCI staff, the general counsel,
16 outside advisors, and this truly would turn into the
17 type of inflexible interminable lawsuit rather than
18 regulatory proceeding that the RMBS hedge funds seems
19 to be promoting.

20 And I don't think there's any basis
21 whatsoever for their motion, and they've shown no
22 abuse of discretion in Your Honor's decision on
23 Monday. They've come in here with binders full of
24 these same materials, asked questions about them.
25 It's their exhibits they marked. They're not here

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1 with a single fact witness, Your Honor, to offer live
2 testimony. And it's just their naysayers about
3 everything that OCI puts forth, but they have no
4 affirmative showing of any evidence of their own of a
5 factual nature. If they had anything, we would have
6 tried to respond to their inquiries or contentions on
7 factual levels.

8 But, again, there's no requirement, I
9 submit, in this special type of proceeding for the
10 types of rigid inflexible types of litigation that
11 they're promoting. They want discovery, they want
12 depositions, they want to, for reasons beyond my
13 understanding, delay this interminably. And I think
14 that OCI's tried to balance these issues and get as
15 much information as rapidly as possible before you
16 and them and try to get this proceeding moving
17 forward to confirmation so we can start making the
18 payments.

19 And I think to grant their motion
20 doesn't take this out of rehabilitation. What it
21 does is essentially would require us to step back and
22 spend who knows how long, months, years, probably
23 coming back to the same position.

24 So I respectfully submit that OCI's
25 materials that we've submitted are well prepared,

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1 they're well vetted and supported by those OCI. Mr.
2 Peterson made that clear, that he and his office
3 stand behind the statements there and there was no
4 equivocation by him in that regard.

5 And so, again, we're not -- they can
6 challenge if they think there's a factual error in
7 any of those statements and the like, but, again,
8 we're not necessarily offering every single statement
9 in there as being for the truth, but it is offered to
10 show the rational basis underlying OCI's well-founded
11 discretionary decisions, and I think they're
12 appropriate in that regard.

13 So we would urge the Court to stand by
14 its prior order.

15 THE COURT: And the Court --

16 MR. GREENWALD: I'm sorry. If I could
17 make one comment, and very, very briefly. OCI's
18 raised again the question whether or not my clients
19 are policyholders, and I want the record to be clear.
20 My clients are five of the largest hedge funds in the
21 country. They have given sworn testimony to this
22 Court that they hold more than \$1 billion in par
23 value of Ambac-insured residential mortgage-backed
24 securities. At the beginning of this hearing I was
25 prepared to give to the Court to be filed under seal

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1 the specific trusts in which they own those
2 securities and the aggregate amount of their holdings
3 on a par basis.

4 There's no dispute that they have --
5 they are the beneficiaries of the policies directly
6 at issue here, they have a direct financial interest
7 in these policies. And to quibble over whether
8 they're technically a "capital P" Policyholder, as
9 OCI defines, or policyholder as we define, they have
10 a direct financial interest, and we are not simply
11 here to make trouble. We are here to protect they're
12 valid legal interests.

13 MR. DEVORE: Your Honor, may I also be
14 heard?

15 THE COURT: All right.

16 MR. DEVORE: Just shortly. Your Honor,
17 one of the principal issues for One State Street is
18 the Liquidation Analysis. And we moved earlier today
19 to strike the Liquidation Analysis on judicial
20 estoppel based on the inconsistent positions that OCI
21 took on September 9th as compared to the position put
22 in the Liquidation Analysis filed this past Friday.
23 Mr. Van Sicklen has not addressed judicial estoppel,
24 and I would ask the Court rule on that issue as well.

25 MR. VAN SICKLEN: I'd be happy to

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1 respond to that if you like, Your Honor.

2 THE COURT: Go ahead.

3 MR. VAN SICKLEN: There's no for
4 judicial estoppel. If counsel, Mr. Devore, wants to
5 in his closing statements next week, discuss, we can
6 argue about the Liquidation Analysis. But I see
7 nothing inconsistent with what OCI put forth.

8 He went through a series of highly
9 speculative, you know, assumptions and hypotheticals,
10 and we can argue about the testimony that he elicited
11 on how that relates to liquidation and his client or
12 others, but there's no basis to strike the original
13 Liquidation Analysis set forth in the October 8th
14 Disclosure Statement as expanded on the latter one
15 that he is referring to. It just goes to argument
16 and weight. There's to basis to strike it, there's
17 no argument about judicial estoppel.

18 THE COURT: All right. Your motion will
19 be denied. I would agree with that. I don't think
20 that's applicable here, Mr. Devore.

21 The motion for striking the Disclosure
22 Statement and its Amendments as hearsay will be
23 denied as well for the reasons previously stated.

24 Also, again, why are we here? We are
25 here because we have, as the Rehabilitator, the

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1 Commissioner is required to do, he has formulated a
2 plan for rehabilitation of the Segregated Account.
3 Again, it is correct that they don't need to submit
4 this to the Court. They have done so and done so, as
5 I understand their position and as been carried out
6 here during these proceedings, to allow parties to be
7 heard and to voice their opinions and/or objections
8 to the Plan.

9 The purpose of the proceeding is for the
10 Court then to determine whether or not the
11 Commissioner, the Rehabilitator, has a basis that is
12 rational and it's a proper and exercise of its
13 discretion in formulating the Plan, and in that
14 course it has presented to the Court numerous
15 records, and there's been a lot of testimony about
16 the process that went through as a regularly
17 conducted activity of the Department to formulate the
18 Plan, to bring the information together, to base a
19 plan on that information, and what as a result of
20 this entire process the Commissioner is recommending
21 and putting forward as his Plan for the
22 rehabilitation.

23 It is entitled to rely on the records of
24 regularly conducted activity. That's been going on
25 apparently for several years, and we've had testimony

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1 from Ambac personnel about working with OCI, the
2 information gathered and so forth. And all of this
3 is a regularly conduct, required activity by the
4 Commissioner, to gather the data compilations that it
5 needs to formulate its conclusions and create its
6 Plan.

7 It's an exception to the hearsay rule,
8 in my opinion, and for those reasons and the other
9 reasons that have been previously stated when this
10 motion was first raised, the Court will deny that
11 motion.

12 All right. With that, then let's
13 proceed with the next witness.

14 MR. GREENWALD: Your Honor, one final,
15 should be brief. The RMBS Policyholders would move
16 the Court for a directed finding at this time against
17 approval of the Plan. It's our position that OCI has
18 failed to carry its burden to show that the Plan is
19 fair and equitable and, in fact, the evidence in
20 their case proves that it is unfair and that the
21 Segregated Account has not been properly established,
22 and so therefore we would ask the Court to direct a
23 finding and deny approval of the Plan.

24 THE COURT: All right. That will be
25 denied as well.

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1 This is an extremely complex and
2 difficult situation. I have watched the testimony of
3 the Commissioner and especially Mr. Peterson over the
4 two or two days that he was on the stand. It was as
5 grilling a series of questionings as I've seen any
6 witness undergo in all my years on the bench. There
7 were questions asked by very bright, intelligent
8 counsel, and the answers given, the evaluation shown
9 to have been made, the factors gathered, the
10 procedures followed as testified to by Mr. Peterson
11 leads me to believe, as they consistently pointed
12 out, that they were acting in what would be the best
13 interest of their policyholders, doing what is fair
14 for them.

15 I also noticed in the demeanor and the
16 approach of the Ambac -- witnesses from Ambac who
17 have come to testify here an acceptance, a respect
18 for the authority and the role and understanding of
19 the role of OCI in the management of the affairs of
20 the Segregated Account and their relationship as it
21 related to the General Account. I thought it was a
22 presentation that clearly established that it was
23 fair, it was equitable. It was an extremely well
24 thought out, well based decision.

25 And for the purposes of the Plan it

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1 certainly meets the criteria as being a solid
2 exercise of the discretion of the Department of the
3 Rehabilitator, of the OCI, certainly is fair and
4 equitable from what I can see of this.

5 And I'm satisfied that it meets all of
6 those crits and for those bases would deny that
7 motion.

8 Call your witness.

9 MR. GREENWALD: Thank you, Your Honor.
10 And we would be calling Mr. James Schacht to the
11 stand, and I will be ceding the mic to my partner,
12 Mike Brody.

13 MR. VAN SICKLEN: And, Your Honor, in
14 regard to this witness, we have two requests.

15 MR. GREENWALD: Can we just wait until
16 Mike gets here, if that's all right? Mr. Brody is a
17 bona fide Wisconsin and Badger, and so I thought it
18 appropriate that he participate.

19 THE COURT: Not to say that others would
20 not be bona fide?

21 MR. GREENWALD: I am not from Wisconsin
22 but love Wisconsin.

23 MR. BRODY: I guess he's saying I don't
24 need to wear a hat. Your Honor, we're ready to call
25 the witness, but apparently Mr. Van Sicklen has some

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1 issues he wants to raise.

2 MR. VAN SICKLEN: It's not really
3 issues. It's two things, Your Honor. First, like
4 the Objectors, we have organized the order of what
5 our cross-examination will be. Mr. Ricardo, my
6 roommate at the neighboring table will be starting,
7 then I will go second. This is the only Objectors'
8 live testifying witness, is this particular paid
9 expert, Mr. Schacht. And he's put in an affidavit
10 with a bunch of exhibits, and we think it would, in
11 order to get done with his testimony today, might be
12 prudent to essentially take his written materials as
13 his direct testimony. Mr. Brody can amplify any sort
14 of different points that aren't covered in there, and
15 then we can proceed with the crosses. I'm just
16 trying to look for ways to get done today so we can
17 start promptly on Monday with closing arguments
18 because we may as well have a rebuttal witness yet
19 today.

20 MR. BRODY: I appreciate the offer, Your
21 Honor, but we would like to call our witness live. I
22 will examine him with his report in front of him, and
23 if they want to accept it in evidence for the purpose
24 they suggest, that would be fine. And I'll try to
25 streamline matters. But I think the Objectors are

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1 entitled to present live testimony, as the OCI has.

2 MR. VAN SICKLEN: They can present live,
3 Your Honor, and we would reserve our objections as to
4 his competence on legal conclusions and certain
5 things. I was just hoping not to replot things that
6 are in laid out in his background affidavit.

7 MR. BRODY: I will try to do that.

8 THE COURT: All right. Call your
9 witness.

10 MR. BRODY: Your Honor, we would call as
11 our witness, James Schacht.

12 THE COURT: All right, sir, will you
13 come over here to the witness chair, be seated, raise
14 your hand to receive the witness oath.

15 **JAMES SCHACHT,**

16 having been first duly sworn,
17 was examined and testified as follows:

18 THE COURT: All right. Be seated.

19 **DIRECT EXAMINATION:**

20 BY MR. BRODY:

21 Q Good morning, Mr. Schacht, could you please spell
22 your name for the court reporter.

23 A **The last name is spelled S-C-H-A-C-H-T.**

24 Q And you are here as an expert witness on behalf of
25 the RMBS Policyholders?

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1 A **That is correct.**

2 Q And also for Freddie Mac?

3 A **Correct.**

4 Q Yeah. Could you please tell the Court what you do
5 for a living?

6 A **At the present time I'm the president and owner of
7 the Schacht Group.**

8 Q And what is the business of the Schacht Group?

9 A **The Schacht Group provides consulting, advisory
10 services to the insurance industry.**

11 Q Sir, do you have a copy of what we've marked as
12 Exhibit 66 in front -- Well, you're about to get one.

13 MR. BRODY: And, Your Honor, I'm not
14 sure if you have one. Have you received a copy of
15 this document?

16 THE COURT: I have received it. I think
17 it's in these documents here. I have it.

18 MR. BRODY: Okay. And I believe this is
19 the document that Mr. Van Sicklen is permitting to
20 come into the record as evidence.

21 MR. VAN SICKLEN: Well, subject to our
22 objections and questioning.

23 MR. BRODY: Understood.

24 Q Sir, if you turn to Tab A of this exhibit, is that
25 your professional resume'?

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1 A **It is.**

2 Q And I'm not going to go through all the items here,
3 as Mr. Van Sicklen suggested, but I would like to
4 focus at the beginning with your work in the
5 insurance regulation field. First, how long have you
6 been involved in the insurance field?

7 A **A little over 45 years.**

8 Q And among those responsibilities have you been
9 involved as an insurance regulator?

10 A **Yes.**

11 Q For what state?

12 A **Illinois.**

13 Q What's the name of the regulator in Illinois?

14 A **The agency's name is the Illinois Department of
15 Insurance. The head of the agency in Illinois is
16 called the Director of Insurance, but it's comparable
17 to the Commissioner of Insurance here in Wisconsin.**

18 Q We heard Mr. Dilweg, I believe, describe the business
19 of his agency and the number of insurers that are
20 regulated by it. Approximately how many insurance
21 companies are regulated by the Department of
22 Insurance in Illinois?

23 A **Well, when I was there it was approximately 1500. It
24 was about five times the size of Wisconsin's.**

25 Q Could you describe in general terms the positions

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1 you've held within that agency, you know, when you
2 started and how you moved up.

3 A **In 1964 I joined the Department as an examiner, was
4 promoted to a supervising examiner, assistant chief
5 and then chief examiner. And then in 1976 I became
6 the chief deputy director. And then in the early
7 Eighties I became responsible for insurance
8 receiverships in Illinois as well as being the chief
9 deputy director.**

10 **On three occasions two governor's
11 appointed me the Director of Insurance, the head of
12 the agency. One term was 1982 and '83. Another was
13 in 1991 and 1992. Another time in 1994 and 1995.**

14 **Both of those governor's asked me to take the
15 position permanently, but it wasn't something that I
16 wanted to do, and so I declined. And I occupied
17 those positions until they could find someone else.
18 As it turned out, I ended up being in those positions
19 as head of the agency well over four years.**

20 Q You mentioned that you were the chief deputy; what
21 did it mean to be the chief deputy?

22 A **The chief deputy was responsible for all of the
23 operational areas of the Department as well as staff
24 positions, including the General Counsel's Office,
25 our Actuarial Office and variety of other staff**

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1 positions.

2 Q I believe one of the positions you mentioned was your

3 role as a special assistant for insurance receivers;

4 what was that?

5 A Well, there was a -- I first got involved with

6 receiverships in 1973 with the failure of a company

7 domiciled in Illinois but located in California

8 called Presidential Life Insurance Company, which is

9 part of the Equity Funding Insurance Group. And

10 shortly thereafter the director decided that he

11 needed someone to oversee -- we had a bureau that

12 concerned itself with insurance receiverships, but

13 the director decided that someone needed to oversee

14 that bureau, and so he appointed me.

15 Q And how long did you serve as the person in charge of

16 the receiver bureau?

17 A Well, I went from this oversight capacity to becoming

18 the Special Deputy Receiver in the early Eighties,

19 and as Special Deputy Receiver I was given the

20 Director's power of attorney, and I essentially

21 functioned as the statutory receiver from about 1983

22 or so to until I left government service in 1995.

23 Q During that dozen or so years, approximately how many

24 receiverships or reorganizations were you supervising

25 at any one time?

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1 A Well over 50.

2 Q So is that 50 over the time period or at each

3 individual point in time?

4 A Well, as you go through that period of time, we had

5 additions and subtractions to this inventory of

6 receiverships estates that we were responsible for

7 the administering. But on average over those -- that

8 period of time of about 15 years we had 50 estates.

9 Q You said you left the agency in 1995?

10 A That's correct.

11 Q What did you do after you left the Department of

12 Insurance?

13 A Well, I left to join an international accounting firm

14 by the name of Coopers & Lybrand to start an

15 insurance regulatory practice at that firm. It was

16 the first regulatory practice that any of the big

17 eight accounting firms were to have, but they

18 eventually all formed one.

19 And in 1998 the firm of Coopers &

20 Lybrand merged with Pricewaterhouse and became

21 PricewaterhouseCoopers. And then in 2005 I left

22 PricewaterhouseCoopers.

23 Q Where did you go after PricewaterhouseCoopers?

24 A After I left PricewaterhouseCoopers I joined a much

25 smaller consulting firm by the name of Navigant

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1 Consulting and headed up an insurance regulatory and

2 restructuring practice.

3 Q When did you leave Navigant?

4 A In 2008.

5 Q Is that when you started your own business?

6 A That's correct.

7 Q And you might have been mentioned this, but what's

8 the business of your company today?

9 A It's providing consulting services to the insurance

10 industry in a variety of different ways. Some of it

11 involves consulting with companies that are troubled,

12 some of it involves dealing with regulators, and just

13 general advisory work to improve their business.

14 I should also add that at the present

15 time I'm on the board of two insurance companies,

16 one a life insurance company, and the other part of

17 an international group of property casualty

18 companies.

19 Q In your professional resume' you identify yourself as

20 a Certified Insurance Receiver. What does that mean?

21 A Well, in the early Nineties, those that were

22 responsible for administering receiverships around

23 the country decided that they needed a form of their

24 own association. So there was an association created

25 that was named the International Association of

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1 Insurance Receivers.

2 One of the motivations for forming that

3 association was that, at least in some people's view,

4 people that were occupying positions of receivers

5 around the country were not adequately experienced,

6 informed about receivership proceedings and that

7 something needed to be done to have a credentialing

8 process for those that were involved in insurance

9 receiverships. Certainly there were other reasons

10 for forming the association, but that was a

11 substantial one.

12 And just like any other association the

13 actuaries or lawyers or accountants, when you begin a

14 professional association you bring into the

15 association through recommendations of others that

16 are in that practice area and through interviews you

17 determine whether or not people are qualified for the

18 granting of a designation.

19 I should add that at the present time

20 the Association has underway a training study program

21 that's being created and that will be shortly

22 followed by a testing program. So the admission into

23 this Association I think will become more rigorous,

24 disciplined than it is now.

25 But whatever value people see in that

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1 designation of Certified Insurance Receiver, I
2 possess it, and it relates to all types of insurance
3 companies.
4 Q Now, one other organization we've heard about in
5 these proceedings is the NAIC; what do those initials
6 stand for?
7 A They stand for the National Association of Insurance
8 Commissioners.
9 Q And what has been your role in that organization?
10 A Well, when I was in government service I was actively
11 involved in that organization for probably well over
12 25 years. And by involved I mean I was responsible
13 for creating a number of uniform laws, regulations
14 covering holding companies, gary funds,
15 receiverships, actuarial opinions, certified public
16 audits by certified public accountants.
17 I also created a number of regulatory
18 tools and manuals. Chaired the group that drafted
19 the first statutory accounting manuals, drafted a
20 troubled company manual, oversaw the organization's
21 early warning system. That was a precursor of the
22 CAMEL rating system that banks use at the present
23 time.
24 Mr. Peterson mentioned the FAWG Group
25 several times, and that was something that I also

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1 created in 1988, appointed Mr. Peterson's
2 predecessor, Mr. Bloomer to head that group, and he
3 did an outstanding job, and I'm sure Mr. Peterson is
4 doing an outstanding job today.
5 But I spent a lot of time in the NAIC's
6 activities and did a lot of things, and I probably
7 haven't mentioned them all.
8 Q You mentioned some model laws. What model or uniform
9 laws did you work on?
10 A I worked on the Guaranty Fund Laws, which was the
11 safety net for the insurance industry and its
12 products. I wrote several amendments to the
13 insurance receivership statute, the Model Act, as
14 well as, as I indicated, amendments to the Holding
15 Company Act that was adopted by the NAIC in 1968, and
16 several others that I'm probably not recalling as I
17 sit here now.
18 Q Okay. Have you received any awards from the NAIC?
19 A Yes. I was one of the initial recipients of the
20 Robert E. Dineen Award, which is granted by the NAIC
21 in recognition of a person's contribution to
22 insurance regulation in this country.
23 Q And since you've gotten out, you've left the
24 Department of Insurance, you've served as an expert
25 from time to time?

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1 A Yes.
2 Q And are those occasions identified in your
3 professional resume'?
4 A They are.
5 Q In this proceeding we've heard some of an insurance
6 company called Triad. Were you here in the courtroom
7 when Triad was discussed?
8 A I was.
9 Q We'll get into the details of that in a moment, but
10 will you just describe what role you played in Triad?
11 A Triad was a mortgage guarantee insurer in this
12 country, and the board and management asked me to
13 assist them in dealing with the problems that they
14 had encountered beginning in 2007.
15 Q How long did you work on that matter?
16 A I worked until a solution was devised by myself and
17 implemented, which occurred in the middle of 2009.
18 Q Now, based on the experience you've had in the
19 insurance field, have you learned the customs and
20 practices as to how regulators handle troubled
21 companies and the demands that it faces?
22 A Yes.
23 Q Now, before we talk about what those particular
24 customs are, I'd like to talk a little bit about how
25 they developed. Was there an individual or a person

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1 who was instrumental in developing these uniform
2 standards in the insurance rehabilitation field?
3 A Yes.
4 Q Who was that?
5 A Spencer Kimball.
6 Q Can you just describe briefly who Spencer Kimball was
7 and what he did?
8 A Well, Spencer Kimball held a number of positions. He
9 was a professor here at the University of Wisconsin
10 Law School. I think he began his career in the state
11 of Utah. His father was the head of the Mormon
12 church. He then moved from Wisconsin to Michigan, I
13 believe, headed up the law school there, then moved
14 to the University of Chicago, where he -- I'm not
15 sure if he headed the law school, but he was
16 certainly a prominent professor in the law school,
17 and then after that worked for the American Bar
18 Association in Chicago. And it was in that occasion
19 when he was working with the American Bar
20 Association, I believe, that I first met him.
21 Q He was my torts professor. I wish I had taken his
22 insurance class, having sat in this courtroom.
23 What did Spencer Kimball do to advance
24 the uniform practice in rehabilitation?
25 A Well, in 1967 he undertook a project to rewrite the

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1 Wisconsin receivership statute, and one of the unique
2 things that he did, and actually very helpful things
3 that he did, I wrote extensive commentary on that
4 statute. As a person that is -- that has spent his
5 entire life trying to understand and implement and
6 interpret statutes around the country dealing with
7 insurance, you find commentary particularly helpful
8 and useful in that endeavor.
9 So that's something that Spencer did,
10 and I think he had a particular motivation behind it
11 in that, you know, there were few insurance
12 receiverships at the time, primarily smaller local,
13 regional automobile insurance writers, but perhaps he
14 saw that someday we would be dealing with much more
15 than -- much larger companies, more multi-line
16 companies. So, anyway, he --
17 MR. VAN SICKLEN: Wait. Your Honor, I
18 would interject. I would to object where he starts
19 talking about what perhaps his motivation might have
20 been, et cetera, so I would strike the last answer.
21 If he has specific personal knowledge about what Mr.
22 Kimball might have intended about the future, fine.
23 But I would strike the answer and stick to things
24 that this witness knows for sure.
25 MR. BRODY: Your Honor, the point of the

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1 question is to ask how what Professor Kimball did led
2 to a national understanding of these principles,
3 principals, and I think he was in the process of
4 describing that. I can reask another question.
5 THE COURT: I'll sustain the objection,
6 because he is offering -- Mr. Greenwald must be
7 shivering when he hears the hearsay being offered
8 there, because you're offering this man to say what
9 Mr. Kimball must have been thinking. Out-of-court
10 declaration, offered presumably for the purpose of
11 proving that kind of classic hearsay. Sustain the
12 objection.
13 MR. BRODY: Okay.
14 Q Well, let me ask a different question. Just explain
15 how the Wisconsin effort contributed to a national
16 understanding of these principles.
17 A Yes. The statute that Spencer Kimball wrote in 1967,
18 after it was enacted by the Wisconsin legislature
19 Spencer Kimball and others took that legislation to
20 the NAIC. Up to that point in time the only model
21 receivership legislation that existed is something
22 that's call the Uniform Act for Liquidations. And
23 that was actually drafted by someone else. That was
24 drafted by the Commission on Uniform State Laws.
25 So Spencer Kimball's draft is taken to

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1 the NAIC, it's discussed, it's debated. Some
2 revisions, granted, are made in it, particularly
3 dealing with offsets, also dealing with unearned
4 premiums and their treatment in liquidation. But in
5 the main that statute that Wisconsin enacted became
6 the NAIC's model.
7 Q And then was it adopted in other states?
8 A Yes. It was adopted in Illinois. And several other
9 states over time.
10 Q Okay. Now, as a result of that continuing effort,
11 have there come to be nationwide customs and
12 principles that apply to insurance rehabilitations?
13 A Yes.
14 MR. VAN SICKLEN: I object to that
15 question. There's no foundation for state-by-state
16 variations and the like. I mean, custom and practice
17 in what regard? What customs, what practices? What
18 provisions of each of the state laws?
19 MR. BRODY: Your Honor, I'm not going to
20 ask about every provision of state law. The question
21 was directed to -- it is the foundational question,
22 and the question was as a result of the effort that
23 has just been described, have there evolved to be a
24 series of national customs that apply to insurance
25 liquidations. And if the answer is yes, then I've

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1 established the foundation and I'll ask what they
2 are.
3 THE COURT: All right. Sustained -- or
4 overruled, rather.
5 THE WITNESS: Yes, there are national
6 standards and national custom and practice as
7 concerns dealing with troubled insurers.
8 BY MR. BRODY:
9 Q And what are the principles that you've analyzed in
10 your report?
11 THE COURT: This might be an appropriate
12 time to take the morning recess. If you'll just hold
13 that thought, that question.
14 MR. BRODY: Your Honor, can I just get
15 an answer to that question?
16 THE COURT: We'll be in recess for 15
17 minutes, and then we'll start back that. That's a
18 new area.
19 MR. BRODY: All right. Fair enough.
20 (End Reporter Weisling Section
21 A.)
22 (Following proceedings reported
23 by Jennifer Poirior.)
24 (On the record at 10:48 a.m.)
25 THE COURT: The Circuit Court for Dane

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1 County will be back in session in the Matter of the
2 Rehabilitation of Segregated Account of Ambac
3 Assurance Corporation, and we were in the process of
4 direct examination. You may continue, counsel.

5 MR. BRODY: Thank you, your Honor.

6 BY MR. BRODY:

7 Q I think when we broke we were talking about the
8 national or uniform customs that applied to
9 proceedings of this type. I think my question was
10 what are they?

11 MR. VAN SICKLEN: And your Honor, I will
12 note a continuing objection. If you prefer, I can
13 make it every single question if we're going to
14 launch into what this witness thinks are, you know,
15 uniform national practices, but, rather, I'd like to
16 have noted on the record a continuing objection to
17 all those types of questions and answers and be
18 allowed to then explore the basis for those
19 statements in our cross-examination and reserve the
20 right at that point to strike that testimony.

21 MR. BRODY: I think that's an acceptable
22 procedure, your Honor.

23 THE COURT: All right. Proceed then on
24 that basis.
25

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1 BY MR. BRODY:

2 Q Mr. Schacht?

3 A Well, certainly the most important one is the fair
4 allocation of all of the assets of a troubled insurer
5 to all of the company's policyholders. As I said, I
6 think that's probably the most important one. The
7 next most important one is the marshaling of all of
8 the assets that are present and available as a result
9 of the activities and operations of the failed
10 insurer.

11 Q Okay. I'd like to address those, and maybe we'll
12 pick up some others before we're done. On the issue
13 of the fair allocation of the assets of an insurer to
14 all of its policyholders as used in your field of
15 insurance regulation, what's meant by treating
16 policyholders fairly?

17 A Each receivership statute in every state sets forth a
18 priority scheme as far as the distribution of a
19 company's assets, and the standard that I stated
20 means that the assets that are available or could be
21 made available to an insurer must be distributed to
22 the claimants in those various classes set forth in
23 that priority scheme. And that applies not only to
24 liquidations, but also applies to rehabilitations,
25 and actually applies before a company is placed into

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1 **rehabilitation because any Plan that you put together**
2 **to deal with a company's problems must recognize this**
3 **priority class and the allocation of assets to those**
4 **priority classes.**

5 MR. RICARDO: Your Honor, I object and
6 move to strike the answer -- I didn't know what the
7 answer was going to be until I heard it -- to the
8 extent it's providing legal opinions on questions of
9 what Wisconsin Statutes provide. I didn't realize
10 that was what we were going to hear in response to
11 the question. But our position is, obviously, that
12 it is the Court and only the Court that decides
13 questions of Wisconsin law in this proceeding.

14 MR. VAN SICKLEN: Join the objection.

15 MR. BRODY: Your Honor, we're not
16 offering this witness as an expert to opine on
17 Wisconsin law. Wisconsin law is what Wisconsin law
18 is. But we're here to offer testimony as to what is
19 meant in the field of insurance regulation, which is
20 what this case has been all about, about what fair
21 and equitable means. We've heard --

22 THE COURT: Well, we're looking at fair
23 and equitable, but in the Wisconsin context. Sustain
24 the objection. Proceed.
25

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1 BY MR. BRODY:

2 Q Mr. Schacht, let's start talking about some specific
3 reorganizations. You mentioned Triad before, and
4 we'll get to that in a moment. Aside from that, what
5 are some of the other major rehabilitations or
6 supervised runoffs that you have worked on?

7 A Well, the one that I'm working on now and have been
8 working on for the last nine years is a group of
9 companies called, or used to be called, the Kemper
10 Insurance Group, which is the largest property and
11 casualty company in runoff in the U.S.

12 And I have been involved, as I said,

13 with the Board and the management on, in the first
14 instance, creating the runoff plan and now, for the
15 last eight years or so, advising with respect to a
16 variety of things that come up as that runoff plan
17 was implemented and continues.

18 Q Other major rehabilitations that you've worked on as
19 a rehabilitator or in private practice?

20 A Well, two that come to mind when I was a receiver,
21 when I was a Special Deputy Receiver, was a company
22 called Amreco, which stood for American Mutual
23 Reinsurance Company, which was a reinsurer of the
24 mutual insurance industry in the U.S.

25 Another one was a company called Centaur

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1 Insurance Company. That was a subsidiary of the
2 Borg-Warner Corporation. For both of those entities
3 I developed the Rehabilitation Plan.
4 Q And then you've also worked on Triad?
5 A Correct.
6 Q I believe you described this briefly before. What
7 was the name of the insurer in Triad?
8 A It was Triad Guaranty Insurance Company.
9 Q And what was its business?
10 A Its business was solely the underwriting of mortgage
11 guaranty insurance.
12 Q What problem did Triad face?
13 A Well, as Mr. Peterson alluded to in his testimony,
14 Triad, like other mortgage guaranty companies and
15 financial guaranty companies, commencing in the early
16 part of 2007, experienced financial difficulty
17 because of the state of the economy and the recession
18 that was developing.
19 I disagree with Mr. Peterson that Triad
20 Guaranty was undercapitalized. It wasn't. It
21 certainly was undercapitalized from the standpoint of
22 the problems that were to come that were commencing
23 in 2007, but I think it--
24 MR. VAN SICKLEN: Objection. This is
25 nonresponsive. I move to strike. The question was

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1 quite simple, and now we have a long narrative.
2 MR. BRODY: Your Honor, I think in this
3 proceeding it's an appropriate answer to the question
4 that he was asked, to describe the problem Triad
5 faced. He was describing --
6 THE COURT: I agree that that's -- I
7 mean, we could all bring in some armchairs and sit
8 back, and I'm sure we could be here for days if we're
9 going to hear all the problems that they faced. I
10 think you need to be more specific. I'll sustain
11 that objection.
12 And by specific, I mean how is it
13 related to what we're here about as to the Plan
14 that's been offered.
15 MR. BRODY: Okay.
16 BY MR. BRODY:
17 Q When faced with the problem that Triad had -- Let me
18 withdraw that.
19 Did Triad face the same problem that
20 Ambac did?
21 A Yes. It was a different line of business, but, in
22 fact, as I sat here the last three or four days, I
23 was -- it was remarkable to me how the -- how the two
24 companies and its problems were similar.
25 Q Who raised the problem that Triad faced? Did the

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1 Regulator raise it or did Triad raise it?
2 A The Triad Board recognized it. The Regulators
3 certainly were aware of it. And I don't know if you
4 want me to go on from there.
5 Q I'll ask some more questions. At the time Triad
6 faced this problem, approximately how many policies
7 did it have outstanding?
8 A Thousands. You know, more than 10,000.
9 Q Were there certain major policyholders or
10 policyholders that represented a larger number of
11 those than others?
12 A Yes.
13 Q Who?
14 A Going down the line, Fannie Mae, Freddie Mac, Wells
15 Fargo, Countrywide, and it dwindled from there and
16 got down to local, regional, savings & loans that had
17 maybe just a few mortgage guaranty insurance
18 certificates on loans that they had written.
19 Q In developing a plan to deal with the problem that
20 Triad had, did it reach out to these policyholders?
21 MR. VAN SICKLEN: Just, objection; what
22 counsel means by "plan." Is this a Plan of
23 Rehabilitation in a court, or some kind of secret
24 Plan?
25 MR. BRODY: I can answer that, or I can

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1 ask him more questions.
2 THE COURT: Well, why don't we have the
3 witness establish it so we know if this is on par
4 with what we're dealing with.
5 MR. BRODY: Okay.
6 BY MR. BRODY:
7 Q Did Triad eventually make a public Plan or present a
8 public Plan to resolve this problem?
9 MR. VAN SICKLEN: Strike -- Public or a
10 court proceeding?
11 MR. BRODY: I'm sorry. What was the
12 last? Public or --
13 MR. VAN SICKLEN: Is this a
14 Rehabilitation Plan in a court proceeding? I think
15 is -- I'm not sure what counsel means by public.
16 MR. BRODY: I can ask the witness what
17 they did. I thought that's what I was doing.
18 THE COURT: Well, the objection is is it
19 -- Well, the objection was accurately stated. I
20 think you can question in terms of that. Sustain the
21 objection.
22 BY MR. BRODY:
23 Q Did Triad eventually engage in public proceedings to
24 seek approval of its Plan?
25 A It did.

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1 Q Who approved of the Plan?
2 A **The Illinois Director of Insurance.**
3 Q Was that done after public hearing and -- after a
4 public hearing?
5 A **Absolutely.**
6 Q In the Illinois procedure, is there a court hearing
7 or just a hearing before the Agency?
8 A **This particular hearing was a public hearing before
9 the Insurance Director. The Insurance Director
10 presided over the hearing and it was not a court
11 proceeding.**
12 Q Now before that public hearing was held, did Triad
13 reach out to Fannie Mae and Freddie Mac?
14 A **Yes. Triad had ongoing dialogue with all of its
15 major creditors, including Fannie and Freddie
16 particularly. I forget the percentage, but they were
17 substantial creditors of Triad. And sharing
18 information on defaults, foreclosures, the
19 assumptions that were underlying all the modeling and
20 scenario testing that Triad was doing, and much of
21 that was shared with Fannie and Freddie and others.**
22 Q Did they make suggestions as to how the Plan ought to
23 be modified?
24 A **Well, there was --**
25 THE COURT: Just yes or no?

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1 THE WITNESS: Yes.
2 BY MR. BRODY:
3 Q What did Triad do with those suggestions?
4 A **We changed the Plan.**
5 Q In addition to reaching out to Fannie and Freddie,
6 did Triad reach out or communicate with other members
7 of its creditor group or policyholders?
8 MR. RICARDO: Objection; relevance. The
9 fact -- It's not clear to me, your Honor, why the
10 fact that the parties were able to reach agreement in
11 the Triad matter has any bearing on whether the Court
12 should confirm the Plan in this matter.
13 MR. VAN SICKLEN: I'd also join and note
14 that counsel's established that this was not a court
15 rehabilitation proceeding. Not a court proceeding at
16 all.
17 THE COURT: I'll sustain that objection.
18 I think that's a valid distinction.
19 MR. BRODY: Your Honor, if I may be
20 heard briefly on that?
21 THE COURT: Sure. Make your offer of
22 proof.
23 MR. BRODY: The contention in this case
24 is that before court proceedings were even initiated,
25 OCI and AAC were not able to reach out to any of the

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1 policyholder groups because of all kinds of concerns,
2 confidentiality or whatever they were concerned
3 about. This testimony establishes that a reasonably
4 prudent insurance regulator could do precisely that.
5 So that's the basis --
6 THE COURT: Not necessarily, but you're
7 welcome to argue that. I'll still sustain the
8 objection.
9 MR. BRODY: Then, your Honor, may I make
10 an offer of proof as to what the testimony would
11 reveal?
12 THE COURT: Make your offer. Go ahead.
13 MR. BRODY: The testimony would reveal
14 that, if permitted, Mr. Schacht would testify that
15 Triad, in consultation with the insurance regulators
16 in Illinois, reached out to Fannie, Freddie, and
17 other creditors holding smaller stakes in the
18 company, other policyholders holding smaller stakes,
19 listened to their suggestions, made modifications to
20 the Plan, and eventually presented the Plan in a
21 public proceeding, which is where I will now turn.
22 THE COURT: All right. Proceed.
23 BY MR. BRODY:
24 Q At the public proceeding, did any of the groups that
25 you identified, Fannie, Freddie, Countrywide, and so

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1 on, object?
2 MR. VAN SICKLEN: Objection; relevance.
3 THE COURT: Sustained.
4 BY MR. BRODY:
5 Q Was the Plan approved by the Insurance Regulator?
6 A **Yes.**
7 Q What was the basic provision of the Plan?
8 A **Well, I'd like to correct some of the things that
9 Mr. Peterson said because he was wrong when he tried
10 to describe --**
11 MR. VAN SICKLEN: Wait. Wait. Wait. I
12 object. It's nonresponsive. He was asked a direct
13 question. He should answer the question.
14 THE COURT: That's correct. And I'll
15 sustain that objection.
16 Sir, just listen to the question and
17 answer the question, if you would, please.
18 BY MR. BRODY:
19 Q What was the provision of the -- or the Plan as
20 approved by the Insurance Regulator?
21 A **The basic provision of the Plan was payment of
22 obligations as they became due. And in the context
23 of mortgage guaranty insurance, that means that at
24 the time that the property is foreclosed on and
25 there's actually a claim presented, after evaluation**

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1 **by Triad staff, that that claim would be paid**
2 **60 percent in cash and 40 percent in a deferred**
3 **payment account.**
4 Q Were Surplus Notes used?
5 A **Considered, but not used.**
6 Q Why were they not used?
7 MR. VAN SICKLEN: Objection to the
8 relevance. They're in a different line of business,
9 a different context.
10 THE COURT: Sustained.
11 MR. BRODY: Your Honor, may I make an
12 offer of proof as to that as well?
13 THE COURT: Go ahead.
14 MR. BRODY: There have been objections
15 in this case as to the technical aspects of the
16 Surplus Notes and the problems they present. A
17 number of other Objectors, not my clients, have
18 raised issues as to the problem of distributing those
19 Notes and how they pass on to the various holders.
20 In this reorganization, Triad, Mr. Schacht developed
21 a very simple way to solve all of those problems and
22 avoided them completely, and --
23 MR. VAN SICKLEN: And -- I'm sorry.
24 MR. BRODY: -- we would like to show
25 that that could be presented as an alternative that

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1 OCI and AAC have rejected.
2 MR. VAN SICKLEN: I would also amplify
3 my objection to note that the scheduling order
4 required parties to explicate the topics on which
5 witnesses were going to testify. Mr. Schacht put in
6 an affidavit, and nowhere is this particular line of
7 questioning mentioned. So I would, both on relevance
8 and on the grounds of not being within their
9 disclosure of his testimony, you know, object.
10 MR. BRODY: Your Honor, if I may address
11 that as well. The first time Triad was mentioned in
12 this proceeding was, I believe, two days ago by
13 Mr. Peterson. We are responding to testimony
14 introduced in this case by their witness, and I think
15 it would be unfair to say that the scheduling
16 requirements that obligated people to disclose things
17 before the hearing prevent us from calling witnesses
18 to address matters raised in the hearing.
19 THE COURT: Objection is sustained.
20 Proceed. Your offer is in.
21 MR. BRODY: Okay.
22 BY MR. BRODY:
23 Q I'd now like to look at the Ambac proceeding. For a
24 carrier such as Ambac that stopped writing new
25 business, what is the goal of an insurance

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1 rehabilitation?
2 A **Assuming that the failing company cannot get**
3 **additional capital to resume its operations in some**
4 **fashion, the objective then becomes determining the**
5 **best way to fairly distribute all of the assets of**
6 **the company to all of the company's policyholders.**
7 Q Has that been done in the case of the proposed Plan?
8 A **No.**
9 Q In what way has it not been done?
10 A **Well, what has been developed is this notion of, in**
11 **fact already created, a Segregated Account. And as I**
12 **stated in my affidavit, it appears to me that what's**
13 **being shuttled off to this Segregated Account is the**
14 **more risky policies, which is made worse by not any**
15 **assets coming along with them.**
16 Q Does that follow the principles of a fair and
17 equitable distribution?
18 A **It does not.**
19 MR. RICARDO: Objection. To the extent
20 this is an opinion on legal principles, we find it
21 objectionable for the reasons stated earlier.
22 MR. VAN SICKLEN: Join.
23 THE COURT: For that purpose, your
24 objection would be sustained.
25 MR. BRODY: Your Honor, I'm not offering

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1 this as a legal opinion. So I guess for the other
2 purposes, I guess I'd like to continue.
3 THE COURT: All right. Proceed.
4 BY MR. BRODY:
5 Q Why does a distribution as contemplated by this Plan
6 not represent a fair and equitable distribution to
7 all policyholders?
8 MR. RICARDO: I assert the same
9 objection. I just would ask if this testimony will
10 continue, that I can have a continuing objection so I
11 don't have to interrupt at each question.
12 MR. VAN SICKLEN: Join.
13 THE COURT: All right. A continuing
14 objection will be noted.
15 MR. BRODY: Thank you, Judge.
16 THE COURT: As to the legality of method
17 or payment, I believe, was what you were directed to.
18 MR. RICARDO: That's correct, your
19 Honor.
20 THE COURT: All right.
21 BY MR. BRODY:
22 Q Do you have the question in mind?
23 A **If you could restate it, it would be helpful.**
24 MR. BRODY: Read it back, please, Madam
25 Reporter.

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1 (Last question read back by
2 reporter.)

3 THE WITNESS: Well, there's several
4 reasons. You know, the principal one is that, as I
5 stated, there are no hard assets coming with the
6 transfer of these policies from the General Account
7 to the Segregated Account. But preceding that
8 concern is an overall concern that really, I guess,
9 has been discussed in this courtroom and not
10 accepted, and that is just the fairness of the
11 transfer of policies to a Segregated Account.

12 BY MR. BRODY:

13 Q In your experience in the rehabilitation of insurance
14 companies, have you ever seen a rehabilitation of a
15 company where a company was divided in two, as this
16 one is being divided, and policyholders were treated
17 differently?

18 MR. VAN SICKLEN: Well, objection, to
19 compound.

20 THE COURT: Counsel?

21 MR. BRODY: If he answers the question
22 yes, then --

23 THE COURT: We don't know which part
24 he's answering yes to.

25 MR. BRODY: But if he answers the answer

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1 no, which I anticipate the question (sic) to be, then
2 I'm fine. It's like the question do you promise to
3 love, honor, and cherish. If the answer is yes,
4 we're fine.

5 THE COURT: Are you now well-schooled as
6 to how to answer that?

7 THE WITNESS: If I could hear the
8 question again?

9 (Last question read back by
10 reporter.)

11 THE WITNESS: I've seen a lot of
12 rehabilitation plans.

13 THE COURT: Well, just a moment. Yes or
14 no? I think that's what he's --

15 THE WITNESS: No.

16 BY MR. BRODY:

17 Q In what way is this Reorganization Plan unique?

18 A **It's unique in several ways. One is just the matter,**

19 **as I said before, of pushing policies off to a**

20 **Segregated Account, it's unique from the standpoint**

21 **of not transferring any of those assets. Even if you**

22 **accept that that's -- the creation of a Segregated**

23 **Account and a transfer of policies to it is an**

24 **appropriate thing to do, which I don't, then at least**

25 **there ought to be equivalent assets passed along with**

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1 **those policies so that there's sufficient assets to**
2 **satisfy those obligations. There are numerous much**
3 **smaller issues with this Plan, but those -- those two**
4 **are certainly the major ones.**

5 Q You heard Mr. -- You were here for Mr. Peterson's
6 testimony?

7 A **Yes.**

8 Q And you heard the question asked of him that posited
9 two policyholders with equal claims, one in the
10 General Account, one in the Segregated Account, and
11 the General Account would receive a hundred cents
12 cash and the other would receive only 25 cents cash
13 plus a Note. Do you remember that testimony?

14 A **Yes.**

15 Q Have you ever seen a Rehabilitation Plan that divided
16 policyholders in that manner?

17 A **No.**

18 Q Now, in your report you also addressed the role of
19 insurance regulators in dealing with public
20 acceptance and trust. Can you describe briefly for
21 us what the insurance regulator's role is there?

22 MR. RICARDO: And I'll object to the
23 extent what's being sought is a legal conclusion
24 about what the specific legal role of Wisconsin's
25 Commissioner of Insurance is.

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1 MR. BRODY: I think that's the

2 continuing objection. And I'm not asking for a legal
3 role. I'm asking for the custom in this field.

4 THE COURT: Well, then why don't you ask
5 the question that way.

6 MR. BRODY: Okay.

7 BY MR. BRODY:

8 Q Based on your observation of the custom of insurance
9 regulators, is there also a goal for insurance
10 regulators to protect public acceptance and trust?

11 A **Yes.**

12 Q And in what ways does this Plan raise issues
13 regarding public acceptance and trust?

14 MR. VAN SICKLEN: Well, I object.

15 That's him speaking on behalf of the public. If he
16 has problems with it that concern him, that's one
17 thing. Unless he's got some articles or evidence
18 that it's raising issues -- and I'm not quite sure
19 who the public is in this question -- it's just
20 calling for wild speculation by this paid expert.

21 MR. BRODY: You want me to address that,
22 your Honor?

23 THE COURT: Response?

24 MR. BRODY: Yes. I'm not asking him to
25 put himself in the shoes of policyholders. I'm

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1 asking him to put himself in the shoes of an
2 insurance regulator, that which he is and has been,
3 and address how what Wisconsin has done here either
4 follows or doesn't follow the customary practices
5 used by people in that area.
6 THE COURT: Sustain the objection.
7 MR. BRODY: Then I'll make an offer of
8 proof, your Honor.
9 THE COURT: Go ahead.
10 MR. BRODY: If permitted to testify, the
11 testimony would be that a Plan of this type raises
12 serious issues of public acceptance and trust and
13 would expose Wisconsin insurers and regulators to
14 question in other states and make it difficult for
15 people and -- excuse me -- insurance companies
16 regulated in the State of Wisconsin to obtain
17 acceptance of their products, and that the
18 expectations of all policyholders when they buy
19 policies is that they be treated fairly and equally,
20 and that this Plan doesn't adhere to that
21 requirement. That would be the offer of proof.
22 THE COURT: Proceed.
23 BY MR. BRODY:
24 Q One of the things you mentioned in your report, sir,
25 was the issue of liquidation value, and I'd like to

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1 turn to that concept now. In rehabilitation plans
2 that you've done, have you always done a Liquidation
3 Analysis?
4 MR. VAN SICKLEN: Objection. Where in
5 his report is there a discussion of liquidation?
6 MR. BRODY: My notes say Paragraph 45,
7 but let me check. 45 -- I'm sorry. 46, page 20.
8 I'm sorry. Paragraph 46A.
9 Can we state the question, Madam
10 Reporter?
11 (Last question read back by
12 reporter.)
13 THE WITNESS: Whenever it's been
14 required, I have done it. In fact, right before
15 coming here I -- actually, the company sent, that
16 I've been working for, an analysis to the Illinois
17 Insurance Director that the Plan that we were
18 operating under continues to deliver to policyholders
19 more than what they would get through liquidation.
20 BY MR. BRODY:
21 Q Now, in your answer you said in those circumstances
22 where it's required. Are there instances where a
23 Liquidation Analysis, in your opinion, is not
24 required by custom and practice?
25 MR. VAN SICKLEN: And again I object to

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1 his legal conclusion. There's been no showing this
2 witness is competent to interpret Wisconsin insurance
3 law or that Illinois even has a comparable Segregated
4 Account rehab provision, so I would object to the
5 form of the question.
6 MR. BRODY: Your Honor, I think they
7 have a continuing objection to that point, and my
8 question ended by asking about custom and practice.
9 I'm not asking him to opine on Wisconsin law.
10 MR. VAN SICKLEN: The custom and
11 practice in Wisconsin or custom and practice in the
12 jurisdiction that he seems to be familiar with,
13 Illinois?
14 MR. BRODY: No, the custom and practice
15 that he's identified has been developed on a
16 nationwide basis.
17 MR. VAN SICKLEN: I don't think there's
18 been any showing that Wisconsin is following what his
19 interpretation of custom and practice is, so we have
20 that continuing objection.
21 THE COURT: And I'll sustain it on that
22 objection. I think that's right.
23 MR. BRODY: Your Honor, if I may address
24 that point, the testimony has established that
25 Wisconsin was the source of the national standard,

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1 that in this instance the nation followed Wisconsin.
2 THE COURT: Well, that may be, but you
3 haven't shown what Wisconsin's custom and practice
4 is.
5 MR. VAN SICKLEN: The only testimony to
6 date on that point is Mr. Peterson's regarding the
7 custom and practice in Wisconsin regarding
8 liquidation. Unless they have some facts to point to
9 of a different Wisconsin case that is inconsistent
10 with Mr. Peterson's testimony, this is just suborning
11 some kind of opinion that has no basis in Wisconsin
12 law.
13 MR. BRODY: I'm going to object to the
14 word "suborning."
15 MR. VAN SICKLEN: Well, eliciting.
16 You're right. I apologize.
17 MR. BRODY: Thank you.
18 BY MR. BRODY:
19 Q Well, let me address it this way. Since you
20 submitted your report, sir, has the State of
21 Wisconsin provided a Liquidation Analysis?
22 A **They have.**
23 Q In your view, is that a sufficient and adequate
24 Liquidation Analysis?
25 A **No. It appears to me that at the last minute,**

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1 somebody got the idea that we need a Liquidation
2 Analysis and one was hastily put together that is not
3 complete, does not contain all of the assets or
4 properly look at all of the liabilities. And so yes,
5 they did prepare one, but it's woefully inadequate.
6 Q What assets are missing?
7 A Well, there are several. And I say this and I feel I
8 have to qualify this by I have -- I can only look at
9 what's been made available, and so from that -- And
10 granted, you know, the last three or four days I sat
11 in this courtroom and I have added to my knowledge
12 about Ambac and its operations and financial
13 statements. But one obvious one is that there is a
14 billion dollars sitting over in the U.K. We heard
15 testimony about that that's not included. I know --
16 MR. VAN SICKLEN: Wait. Wait. Wait.
17 Wait. Wait. I object. There's been no testimony
18 whatsoever that there's a billion dollars sitting in
19 the U.K.
20 MR. BRODY: Your Honor --
21 MR. VAN SICKLEN: What -- I would move
22 to strike that unless counsel can establish some
23 record of such testimony.
24 MR. BRODY: Your Honor, I think that's
25 cross-examination. Mr. Van Sicklen will have his

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1 chance.
2 THE COURT: All right. So -- I'll
3 sustain the objection. I don't recall it either. If
4 you want to establish that, you'll need to establish
5 it more properly. Sustain the objection.
6 BY MR. BRODY:
7 Q Aside from the U.K. analysis that we'll see if we can
8 come back to, what other assets are not included?
9 A Well, this one was discussed yesterday, and this has
10 to do with whether or not there's any value with the
11 existing business that sits in the General Account.
12 I don't know if there is or there isn't, but there
13 were certainly none included in the Liquidation
14 Analysis. I know from my work at Triad Guaranty
15 that --
16 MR. VAN SICKLEN: Wait. Wait. Wait.
17 Again, this is nonresponsive.
18 THE COURT: Sustained.
19 BY MR. BRODY:
20 Q Are there any additional assets that you know from
21 your experience should be included?
22 A Yes. One obvious one is the value of systems
23 software that I know they have that permit them to do
24 their business, price their business, monitor their
25 business. All of those systems are very valuable.

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1 We ended up selling our systems at Triad for several
2 million dollars. And so that was not considered.
3 Q Have you been able to do a complete analysis of the
4 assets to see what else should be there?
5 A All I can do is, from what I read in the Disclosure
6 Statement, what's available in the Annual Statements,
7 what's been testified to over the last few days,
8 identify things that should have been included. My
9 recollection is that there wasn't anything included
10 for the rep and warranty remediation claim. I
11 recognize there's some dispute as to the value of
12 that, but some amount should have been included in
13 the Liquidation Analysis.
14 Q What about on the liability side? Does the
15 Liquidation Analysis appear to be an appropriate
16 analysis of liabilities?
17 A Well, the first question that arises with regard to
18 the liabilities that are shown in that liquidating
19 statement is the date. The date is -- precedes the
20 bank transaction, and it considers those liabilities.
21 I think it would have been more appropriate to do one
22 as of a more recent date after the conclusion of that
23 transaction, which I understand is concluded and
24 final. And I think, you know, certainly as
25 everyone -- Mr. Peterson talked about and others, the

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1 difficulty in valuing liabilities of a financial
2 guaranty company, what you want to include in the
3 Liquidating Statement is the actual loss claims that
4 you would allow in liquidation. Now, I recognize
5 that requires some effort, but that's how one goes
6 about completing a Liquidating Statement.
7 Q In this Plan, what entity or groups bear the risk of
8 the rehabilitation not succeeding?
9 A Well, this is another one of my major problems with
10 this Plan. The risk is placed on those that paid
11 their premium for the coverage that they purchased
12 and now are being asked again to take another risk,
13 and that risk being whether or not this Plan can work
14 and deliver the value that they expected when they
15 purchased these insurance policies. And that --
16 Asking policyholders to do that is unheard of, never
17 been done before. And as I said in my affidavit, I
18 think Wisconsin should rethink this Plan because
19 there's going to be repercussions to them nationally
20 if this becomes the model in Wisconsin.
21 MR. VAN SICKLEN: Objection;
22 nonresponsive. We're getting back into his opinion
23 about public perception.
24 THE COURT: Sustained. Try to just keep
25 in mind the question that's being asked.

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1 BY MR. BRODY:
2 Q Well, I think I just have one more area to go into to
3 follow up on the last answer. When you said the
4 policyholders are being asked to take an additional
5 risk, which policyholders?
6 A Well, particularly those that are placed in the
7 Segregated Account. This is completely -- Completely
8 violates this nationally accepted standard and
9 practice of treating all policyholders the same.
10 MR. RICARDO: I object and move to
11 strike the testimony about a national acceptance
12 standard of treating all the policyholders the same.
13 THE COURT: Consistent with prior
14 rulings, that will be sustained.
15 MR. BRODY: If I may have a moment, your
16 Honor?
17 (Pause)
18 Your Honor, I have no further questions.
19 Thank you, sir.
20 THE COURT: Mr. Ricardo?
21 MR. BENTLEY: Your Honor, perhaps it's
22 appropriate that other policyholders be able to ask
23 questions before it gets turned over to OCI and
24 Ambac?
25 MR. VAN SICKLEN: I thought the

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1 testimony elicited by one party here --
2 THE COURT: Held all.
3 MR. VAN SICKLEN: Yeah.
4 MR. BENTLEY: I'm not going to repeat
5 what's been asked.
6 MR. VAN SICKLEN: He wasn't identified
7 as this gentleman's, you know, witness.
8 MR. BENTLEY: No. This is a witness of
9 the RMBS Holders, but the practice in this proceeding
10 has been that each party is allowed to question each
11 witness.
12 MR. GREENWALD: And just to be clear for
13 the record, both Freddie Mac and the RMBS
14 Policyholders specifically have called Mr. Schacht.
15 I just want that clear on the record.
16 THE COURT: All right. Go ahead,
17 Mr. Bentley. We'll let you ask.
18 **DIRECT EXAMINATION:**
19 BY MR. BENTLEY:
20 Q Good morning, Mr. Schacht.
21 A Good morning.
22 MR. BENTLEY: For the record, Philip
23 Bentley for the LVM Bondholders.
24 Q Have you and I spoken prior to today?
25 A No.

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1 Q On any occasion?
2 A No.
3 Q And have you and I today spoken about the substance
4 of this case?
5 A No.
6 Q We've only spoken about sartorial issues, I think?
7 A Yes.
8 Q Such as hats?
9 A Hats specifically.
10 Q You are familiar, I take it, with the Plan of
11 Rehabilitation that's being proposed in this
12 proceeding?
13 A Yes.
14 Q And have you reviewed the Disclosure Statement,
15 including its various financial projections?
16 A Yes.
17 Q And have you reviewed the various supplemental
18 disclosures that OCI has made in connection with that
19 Disclosure Statement?
20 A Yes.
21 Q Now, you have expressed the opinion, I believe, in
22 your -- the testimony you just gave that a
23 fundamental objective of any insurance rehabilitation
24 or liquidation proceeding should be to treat
25 policyholders equally and fairly, correct?

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1 MR. VAN SICKLEN: Objection; leading.
2 MR. RICARDO: And I also object that --
3 I think we objected to the prior testimony to which
4 Mr. Bentley is referring.
5 MR. VAN SICKLEN: And it's also
6 cumulative.
7 THE COURT: I'll sustain it on all those
8 grounds.
9 MR. BENTLEY: Okay. Let me try it a
10 different way.
11 BY MR. BENTLEY:
12 Q Is it your view that in a rehabilitation or
13 liquidation proceeding, it's important to treat all
14 policyholders equally and fairly?
15 MR. VAN SICKLEN: Same objection.
16 THE COURT: Sustained.
17 BY MR. BENTLEY:
18 Q Now, do you have some familiarity with the potential
19 claims that are expected to be asserted against
20 Ambac?
21 A Some.
22 Q Are you aware that some of those claims may be
23 asserted very soon; other claims may not be asserted
24 for as long as 20 years or longer from now?
25 A Yes. Those are what we call short-tail and long-tail

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1 **claims.**
2 Q And the ones that are 20 or more years out would be
3 long-tail claims?
4 A **Yes.**
5 Q Do you have a view, based on your review of the Plan
6 and associated Financial Disclosures -- Strike that.
7 I'm sorry.
8 Have you been here in court throughout
9 the course of this week?
10 A **I have.**
11 Q And have you heard all of the testimony that's been
12 given?
13 A **Yes.**
14 Q Do you have a view, based on your review of the Plan,
15 the associated disclosures, and the testimony that
16 you've observed this week, as to whether the Plan
17 provides equal and fair treatment of long-tail claims
18 as compared to short-tail claims?
19 MR. VAN SICKLEN: Your Honor, same
20 objection. Mr. Bentley's, once again, skillfully
21 asking the same question that's been objected to and
22 sustained in about six different ways.
23 MR. BENTLEY: May I be heard, your
24 Honor?
25 THE COURT: Make your offer, because I'm

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1 going to sustain the objection.
2 MR. BENTLEY: My offer is I believe this
3 witness would say that he does have a view, and that
4 his belief is that the treatment of long-tail claims
5 is not fair and equal because long-tail claims face
6 greater risks of nonpayment than are faced by
7 short-tail claims.
8 THE COURT: All right. Proceed.
9 BY MR. BENTLEY:
10 Q Do you have a view, based on what you've reviewed and
11 the testimony you've heard, as to whether long-tail
12 claims face risks of nonpayment that exceed those
13 faced by short-tail claims?
14 A **I do.**
15 Q What's your view?
16 A **They're taking on a greater risk.**
17 Q And do you believe that as a result, they're not
18 receiving equal and fair treatment as compared to
19 short-tail claims?
20 MR. VAN SICKLEN: Same objection.
21 MR. RICARDO: Objection.
22 THE COURT: Sustained.
23 MR. BENTLEY: That's all I have, your
24 Honor.
25 THE COURT: All right. Anyone else feel

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1 qualified to follow Mr. Bentley? Or want to follow
2 Mr. Bentley?
3 One State Street? You usually do.
4 MR. DEVORE: Not today, your Honor.
5 We've established everything we needed.
6 THE COURT: All right. I believe we're
7 ready now for cross.
8 MR. RICARDO: Thank you, your Honor.
9 **CROSS-EXAMINATION:**
10 BY MR. RICARDO:
11 Q Good morning. My name is Henry Ricardo. I'm with
12 the Dewey & LeBoeuf Law Firm, and I represent Ambac
13 Assurance Corporation. You're familiar with certain
14 lawyers at my firm, correct?
15 A **Correct.**
16 Q You're not an attorney, sir; is that correct?
17 A **That's correct.**
18 Q You're not here to give advice on the law, I take it;
19 is that right?
20 A **That's incorrect.**
21 Q Okay. You've never worked for the Office of the
22 Commissioner of Insurance of the State of Wisconsin,
23 have you?
24 A **I have not.**
25 Q Your affidavit spends approximately 20 paragraphs

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1 describing your experience. Does that experience
2 include testifying in any Wisconsin delinquency
3 proceeding before today?
4 A **Not that I recall.**
5 Q So no Court has ever previously permitted you to
6 testify in the area of Wisconsin delinquency
7 proceedings as an expert; is that correct?
8 A **That's correct.**
9 Q Your affidavit states that you have been qualified as
10 an expert in certain matters, but none of those
11 matters involved the establishment of a Segregated
12 Account under Wisconsin law; is that correct?
13 A **That's correct.**
14 Q And when you update your CV to include your testimony
15 today, will you count today as an instance of
16 testimony in which you've been qualified as an expert
17 witness?
18 A **Probably not.**
19 Q So in terms of the issues --
20 MR. BRODY: Your Honor, I'm sorry. I
21 hate to interrupt counsel's examination, but I just
22 want to get an understanding of the ground rules.
23 Mr. Peterson offered and was accepted as offering
24 testimony as an expert. I think Mr. Dilweg was as
25 well, but we never went through the formal

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1 qualification procedure. We took our lead from OCI's
2 practice and wonder if that's the practice your Honor
3 would like us to follow?
4 If you want us to move him to be
5 accepted as an expert on these topics, we can, but
6 that's not been a practice that's been followed.
7 MR. VAN SICKLEN: There's been no prior
8 experts. I think counsel rested his witness and this
9 is the only expert, so there's not a prior practice.
10 MR. BRODY: No, your Honor.
11 Mr. Peterson, I remember your Honor accepting his
12 testimony in a number of regards because he was an
13 expert, but he was never qualified as one.
14 THE COURT: Well, by training and
15 experience. I think what we're having is the
16 foundation laid here as to whether or not -- In fact,
17 this witness has just now indicated that he wouldn't
18 treat himself as being qualified as an expert, so
19 maybe he's answered the question for you.
20 I think what's happening is the testing
21 of his qualifications to speak to this Plan in this
22 state, under this state's law. And from that, it's
23 for the Court to decide what weight it gives to his
24 testimony as an expert, if any. The statutes
25 indicate that you can look at someone by training and

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1 experience, by education, who can assist the trier,
2 and offer testimony that will assist the trier in
3 determining and deciding issues here, and I think the
4 test is on now to see whether he so qualifies.
5 You hadn't offered him, and at this
6 point we're testing to see whether he would qualify.
7 MR. BRODY: Well, I understand that and
8 I think it's appropriate to test his qualifications.
9 But just so there's no confusion -- I said this in
10 direct -- the testimony we have elicited from him is
11 not on issues of Wisconsin law, but on national
12 custom and practice in rehabilitation. And if it's
13 necessary to formerly say we move his acceptance as
14 an expert in that area, then so be it. But it was
15 not our understanding that was the practice. So
16 that's the area in which we have offered his
17 testimony.
18 THE COURT: You are the attorney
19 presenting the witness. You have to proceed as you
20 deem appropriate.
21 Mr. Ricardo, proceed.
22 MR. RICARDO: Thank you, your Honor.
23 And I'll continue, as your Honor rightly perceived,
24 testing the witness' foundation to address certain
25 subjects.

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1 BY MR. RICARDO:
2 Q So in summary, sir, your total experience giving
3 expert analysis on Wisconsin delinquency proceedings
4 and Wisconsin Segregated Accounts before this matter
5 is zero; is that right?
6 A That's not entirely correct.
7 Q But certainly no such engagements are listed in your
8 affidavit; is that correct?
9 A That's not correct either.
10 Q Okay. Can you point to me in your affidavit where
11 you've had a prior engagement involving a Wisconsin
12 delinquency proceedings? And I think the affidavit
13 was marked as --
14 MR. VAN SICKLEN: 66.
15 BY MR. RICARDO:
16 Q -- Exhibit 66, if you have that handy.
17 THE COURT: Can you provide him with --
18 Does he have it? Okay.
19 THE WITNESS: Do you want me to locate
20 it in this affidavit, or do you want me to just
21 respond to your question?
22 BY MR. RICARDO:
23 Q Well, what was it?
24 A It wasn't a particular paid engagement, but one of
25 the things that I mention in this affidavit is a

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1 project that I undertook to create an interstate
2 compact for insurance receiverships. Wisconsin was
3 part of that engagement, so to speak, in that they
4 were interested in what such an interstate compact
5 would look like. And so I put a group together and
6 we drafted a compact, and it included Wisconsin. In
7 order to activate the compact, it required
8 legislative action, of course. And the Wisconsin
9 legislature adopted the compact, but the Governor I
10 think was Tommy Thompson at the time, vetoed the
11 legislation. So everybody but Wisconsin was a member
12 of this compact for insurance receiverships, and in
13 the process of creating that compact and the
14 legislation to activate it, I became familiar with
15 the Wisconsin receivership statute.
16 Q So this was a work that highlighted an area in which
17 Wisconsin's statute and receivership regime differed
18 from the regime of all the other states; is that
19 correct?
20 A I would not say that.
21 Q But you did say that Wisconsin didn't adopt a
22 provision that other states did. Am I understanding
23 your testimony correctly?
24 A Not quite. The legislature adopted the legislation
25 to create the compact. When it reached the

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1 Governor's desk, the Governor vetoed the legislation,
2 and with that veto, Wisconsin could not be part of
3 the compact.
4 Q I think I see the problem. The legislation you're
5 referring to is not current -- never became part of
6 Wisconsin law, did it?
7 A No.
8 Q So in that regard, it's an illustration of an area in
9 which the content of Wisconsin insurance receivership
10 law is different from the content of insurance
11 receivership law in other jurisdictions, correct?
12 A Well, you must understand that the compact
13 legislation is separate and apart from the
14 substantive receivership statute. But the question
15 that you originally asked me was my knowledge,
16 familiarity with the Wisconsin receivership statute,
17 and --
18 MR. VAN SICKLEN: I move to strike.
19 He's answered the question.
20 THE COURT: Sustained. Just try to
21 answer the question that's asked. I think a lot of
22 these can be answered yes or no and then followed up
23 on.
24 MR. RICARDO: And I don't mean to
25 belabor the point. I think the record is clear, and

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1 I'll move on to something different.
2 BY MR. RICARDO:
3 Q You testified about Illinois' adoption of a version
4 of the NAIC Model Act, correct?
5 A Yes.
6 Q Did Illinois adopt every provision word-for-word of
7 the Model Act, or were there revisions in its
8 enactment?
9 A No. As I indicated, there was a significant amount
10 of debate at the NAIC with respect to this draft that
11 Spencer Kimball was submitting, and certainly one
12 area -- and I think I mentioned this -- is in the
13 area of unearned premium.
14 MR. VAN SICKLEN: Your Honor, I move to
15 strike. Again it was a simple question and was a
16 yes/no, were there changes. Now he's off on a speech
17 about something that's different.
18 MR. BRODY: No, your Honor. It's not a
19 speech. He's answering the question as to what the
20 changes were.
21 MR. RICARDO: I'm not sure I asked that
22 question.
23 THE COURT: Just try to concentrate on
24 the question asked and then we can follow up. Read
25 the question back for him, please.

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1 (Last question read back by
2 reporter.)
3 THE COURT: Your answer was no, so let's
4 proceed from there.
5 BY MR. RICARDO:
6 Q For example, one of the revisions that Illinois made
7 when addressing the Model Act was to change the
8 preference provisions; is that correct?
9 A I, frankly, don't recall.
10 Q Does Illinois have a Segregated Account statute
11 analogous to Wisconsin's Segregated Account statute?
12 MR. BRODY: Object to the form.
13 THE WITNESS: It has a --
14 THE COURT: Just a moment. What's the
15 problem with the form?
16 MR. BRODY: Analogous to. It's going to
17 require him to do some explaining. And if he's
18 asking is it exactly the same words, that's one
19 question. If he's asking does it lead to the same
20 purpose, that's another question. If he's asking is
21 it consistent with the national practice that he's
22 testified before, that's a third question.
23 MR. RICARDO: I can rephrase the
24 question.
25 THE COURT: All right.

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1 BY MR. RICARDO:
2 Q In connection with your work in this engagement, have
3 you studied Section 611.24(2) of the Wisconsin
4 Statutes?
5 A Yes.
6 Q Does Illinois have that same statute?
7 MR. BRODY: Same objection.
8 THE COURT: Overruled.
9 THE WITNESS: Could you define "same"?
10 BY MR. RICARDO:
11 Q Is there an identical statute in Illinois?
12 A Yes, in certain aspects.
13 Q All right. Can you tell me what that statute is,
14 please.
15 A Illinois, as well as most of the other states, have a
16 statute that is called a Separate Account Statute --
17 not a Segregated Account Statute, but a Separate
18 Account Statute -- very similar and, if not, in some
19 respects identical language as Wisconsin.
20 Q You described in your direct testimony that
21 Wisconsin's receivership statute was the model upon
22 which the NAIC statute was based. Did I understand
23 that testimony correctly?
24 A That's correct.
25 Q But you've also written that the Model Act -- that

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1 Wisconsin's statute was substantially revised in
2 converting it to the Model Act. Am I correct about
3 that?
4 A **I think we could debate whether or not it was**
5 **substantial. There's certainly changes.**
6 Q Okay. Well, rather than debate it, why don't we look
7 at what you said about it, sir.
8 MR. RICARDO: I'd like to mark an
9 article by Mr. Schacht as an exhibit. This isn't in
10 any of the binders, your Honor. It's just a separate
11 exhibit. Shall I have the clerk mark it?
12 THE COURT: Have the clerk mark it.
13 Would the Court Officer bring it up?
14 What's your number?
15 MR. VAN SICKLEN: It will be 67.
16 THE COURT: 57?
17 MR. VAN SICKLEN: 67.
18 MR. BRODY: Counsel, could we get a
19 copy? Can we have a copy?
20 (Exhibit 67 marked for
21 identification.)
22 THE COURT: All right. I have exhibit
23 67, and I'll hand that to the witness.
24 BY MR. RICARDO:
25 Q Exhibit 67 is an article in which you are a co-author

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1 in which the first three words of the headline are
2 "Failing at Failures." Is that correct?
3 A **Yes.**
4 Q I direct your attention to the second page of Exhibit
5 67 and, in particular, to the paragraph most of the
6 way down the page that begins, "In 1977." And please
7 tell me when you're there, sir.
8 A **I have it.**
9 Q And in that paragraph you were describing the
10 relationship between the NAIC statute and preexisting
11 Wisconsin law; is that correct?
12 A **Yes.**
13 Q And you wrote the following words:
14 "The model act had substantive, as well
15 as drafting, differences from the Wisconsin law" --
16 and the sentence goes on -- "and the legislative
17 history provided by the extensive commentary in
18 Wisconsin was deleted from the model act."
19 Have I read that correctly, sir?
20 A **You have.**
21 MR. BRODY: Your Honor, I'm going to
22 object to that as not impeaching. It's entirely
23 consistent with what he said in direct.
24 THE COURT: Well, that's argument then,
25 isn't it?

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1 MR. BRODY: But it's not proper -- It's
2 not proper impeachment to -- attempt to complete an
3 impeachment on a document that's not impeaching.
4 MR. RICARDO: I don't know whether it's
5 impeachment or not, but it's my independent
6 cross-examination.
7 THE COURT: I guess that's a new -- new
8 kind of objection. Impeachment on cross-examination
9 by reading his own statement, it's not impeachment.
10 Overruled. It stands for what it stands for.
11 BY MR. RICARDO:
12 Q And if you look at the next paragraph, sir, you wrote
13 the following:
14 "The flexibility in the Wisconsin law
15 was substantially curtailed in the model act."
16 Have I read that correctly.
17 A **You're picking a sentence out of a long article, and**
18 **I'm trying to remember when I wrote that what I**
19 **meant.**
20 Q Why don't we just start with --
21 MR. BRODY: I'm sorry, your Honor. Can
22 I object to the question on grounds of completeness?
23 The next sentence says, "for example," and describes
24 what that means, and I'd like that to be read into
25 the record.

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1 MR. RICARDO: Well, maybe we could just
2 get an answer on the one sentence I asked a question
3 about.
4 Q Have I read that sentence correctly, sir?
5 A **You had a correct reading, that's correct.**
6 Q Okay. I'm gonna ask you about some of the opinions
7 that are identified in your affidavit, but what I
8 want to clarify, to some extent, which subjects you
9 are addressing and which you're not addressing just
10 so that we all understand what your opinions are.
11 You heard the testimony of the
12 Commissioner and Mr. Peterson about OCI's monitoring
13 of Ambac's financial condition in 2008 and 2009. Do
14 you recall that testimony?
15 A **I do.**
16 Q Are you giving any opinions to the effect that OCI
17 did not act diligently in its monitoring?
18 A **Not at the present time.**
19 Q You also heard testimony from the Commissioner and
20 Mr. Peterson about OCI's formulation of an approach
21 to address Ambac's financial condition; is that
22 correct?
23 A **I did hear that, yes.**
24 Q And that approach which they described included
25 establishing the Segregated Account, allocating

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1 policies to the Segregated Account, and commencing
2 this proceeding, correct?
3 A **That's correct.**
4 Q My question for you, sir, is are you giving the
5 opinion that these actions were taken in bad faith?
6 A **I cannot get into their minds. I think no matter how
7 it was derived, it's bad public policy, it's bad for
8 policyholders. That's my opinion.**
9 MR. VAN SICKLEN: Move to strike.
10 Nonresponsive. It was a simple question.
11 MR. BRODY: I'm sorry, your Honor. Can
12 we have the examiner make the objections instead of
13 getting tag-teamed here?
14 MR. VAN SICKLEN: I think throughout
15 this proceeding I've been tag-teamed by like a dozen
16 people.
17 MR. BRODY: No, your Honor. We've
18 always had only one person in the examiner's chair.
19 MR. VAN SICKLEN: There's many times
20 where different people raised objections, counsel.
21 THE COURT: Yes. Mr. Ricardo, did you
22 wish to respond to that?
23 MR. RICARDO: Well, I'd like to move to
24 strike the answer as nonresponsive.
25 THE COURT: All right. I'll grant that.

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1 Just try to answer the question that's asked. The
2 chance to give an opinion or further development, if
3 that's required, will be afforded you when you're
4 redirected.
5 MR. RICARDO: Can I have the original
6 question read back, please?
7 (Last question read back by
8 reporter.)
9 THE WITNESS: Define bad faith.
10 BY MR. RICARDO:
11 Q Well, I'm asking you, sir, what your opinions are. I
12 understand you've opined about practice and custom in
13 the insurance industry, but I'm asking whether you're
14 addressing something different, and the answer may be
15 no, I'm not. Are you addressing the good faith or
16 the bad faith of the OCI in proceeding in this
17 matter? Is that part of the opinion you're giving in
18 this case?
19 A **The other thing that I'm addressing is the public
20 policy issues.**
21 MR. VAN SICKLEN: Objection.
22 THE COURT: I'll sustain the objection.
23 Sir, listen to the question. It's a yes/no. Read it
24 back for him.
25 (Last question read back by

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1 reporter.)
2 MR. BRODY: I'm sorry. Was there more
3 where he asked for a definition of bad faith, or had
4 that happened already?
5 THE COURT: No. That happened before.
6 MR. BRODY: Thank you.
7 BY MR. RICARDO:
8 Q Are you able to answer that with a yes or a no?
9 A **Let me hear the question again so I know what --**
10 THE COURT: Here's the question: "Are
11 you addressing the good faith or the bad faith of the
12 OCI in proceeding in this matter?"
13 THE WITNESS: No.
14 BY MR. RICARDO:
15 Q Are you giving the opinion that OCI was biased,
16 conflicted, or self-interested in this matter?
17 A **I have no idea.**
18 Q So I take it you're not expressing an opinion on that
19 subject?
20 A **That is correct.**
21 Q Do you know Mr. Peterson personally?
22 A **I know of him. As I said, I knew his predecessors
23 very well, but I've never gotten to know him that
24 well.**
25 Q You never worked with him in connection with the

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1 NAIC?
2 A **Not that I recall.**
3 Q You've heard testimony that one of the steps that OCI
4 took was to hire outside advisors, including legal
5 advisors; is that correct?
6 A **Yes.**
7 Q You worked with some of the lawyers who were advising
8 OCI in this matter; is that correct?
9 A **I'm not -- I don't know. If you give me a name, I
10 can tell you whether or not I've worked with them
11 before.**
12 Q Did you co-chair a conference in Chicago a week or so
13 ago with Kevin Fitzgerald of Foley & Lardner?
14 A **I did not.**
15 Q You did not? Okay. Do you know Mr. Fitzgerald?
16 A **Yes.**
17 Q Do you consider him a competent and respected advisor
18 in the area of receivership, the area of your
19 expertise?
20 MR. BRODY: Objection; relevance, your
21 Honor. This is beyond the scope of the examination.
22 THE COURT: Mr. Ricardo?
23 MR. RICARDO: I can move on.
24 BY MR. RICARDO:
25 Q You've referred from time to time in your testimony

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1 to national customs and practices employed by --
2 employed in receiverships. Am I understanding your
3 testimony correctly?
4 A **Yes.**
5 Q I have a few questions about exactly what those are.
6 Are those national customs and practices something
7 different from the statutes that govern insurance
8 regulators?
9 A **Well, they certainly include those. Well, the answer**
10 **is yes.**
11 Q So your testimony is that there's some body of
12 national principles and customs that exists separate
13 and apart from the statutes, if I understand you; is
14 that right?
15 A **Yes.**
16 Q Where can I find these? Are they written down
17 somewhere?
18 A **Well, I'll give you several places to look.**
19 Q Well, is there one place that will tell me what all
20 the national customs and practices are for dealing
21 with receivership in the context of insurance?
22 A **An index?**
23 Q Is there an authoritative single codification of
24 these national customs and practices about which
25 you're testifying?

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1 A **Yes.**
2 Q Where can I find that, sir?
3 A **Several places. On the desk of any receiver, for**
4 **one.**
5 Q Maybe we're misunderstanding each other. Is there a
6 document --
7 MR. BRODY: I'm sorry. Can he finish
8 the answer? I think he was in the process.
9 MR. VAN SICKLEN: The answer is
10 nonresponsive. The question was is there a single
11 place, and he started saying there's a bunch of
12 places. So again, it's just answer the question, and
13 I would object to the volunteered testimony.
14 MR. BRODY: The question was where I
15 thought.
16 THE COURT: All right. To try and back
17 this up, your comment, if it's an objection, will be
18 overruled. I think he's entitled to ask him where
19 they are because he said they're there. Now, he said
20 they're on everybody's desk. I assume he's going to
21 be asking well, what's the name of the book or
22 pamphlet or whatever, so that's entirely appropriate
23 given his answer.
24 MR. RICARDO: Yes, your Honor. And that
25 was precisely my question.

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1 BY MR. RICARDO:
2 Q Is there a book or pamphlet in which these customs
3 and practices are reduced to some written form that
4 everyone acknowledges is authoritative?
5 A **Yes.**
6 Q And what is that writing?
7 A **The Receiver's Handbook, the Troubled Company Manual,**
8 **the NAIC White Paper on alternative mechanisms for**
9 **dealing with troubled companies. I may forgetting one**
10 **or two, but there's three.**
11 Q You referred to a Receiver's Handbook. Who publishes
12 that and where can it be found?
13 A **It's available and it's published by the National**
14 **Association of Insurance Commissioners.**
15 Q Okay. You mentioned a troubled companies manual.
16 Who publishes it and where can it be found?
17 A **Same publisher, same place to find it.**
18 Q And is the NAIC White Paper the one that's attached
19 to your affidavit?
20 A **It is.**
21 Q You're an expert, sir, so I want to ask you a
22 hypothetical question. If the customs and practices
23 you've described as articulated in these sources
24 differ from the statutes that govern a Regulator in a
25 different state, which should the Regulator follow?

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1 A **I'm unaware of any differences.**
2 Q I understand that, sir, but I'm just gonna ask you to
3 assume for purposes of my question that we do someday
4 identify an instance in which those two differ. Do
5 you have an opinion on which the Regulator should
6 follow?
7 MR. BRODY: Object; speculation.
8 THE COURT: Overruled. It's either yes
9 or no.
10 THE WITNESS: Let me hear the question
11 again.
12 THE COURT: The question is: "I
13 understand that, sir, but I'm just gonna ask you to
14 assume for purposes of my question that we do someday
15 identify an instance in which those two differ. Do
16 you have an opinion on which the Regulator should
17 follow?"
18 THE WITNESS: Yes.
19 BY MR. RICARDO:
20 Q What is that opinion?
21 A **The statute.**
22 Q Do you have your affidavit in front of you? I think
23 it was Exhibit 66?
24 A **Yes.**
25 THE COURT: Just a moment. That's a

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1 good time for the -- The bell just rang. We'll be
2 taking the noon recess at this point. Let's get back
3 here at about -- We're past 12. Let's get back at
4 1:15. And you may step down then, sir. Recess until
5 1:15.

6 (Recess had at 12:04 p.m.)

7 (End of Reporter Poirior's
8 Section B.)

9 (Following proceedings reported
10 by Ellen Weisling.)

11 THE COURT: All right. Circuit court
12 for the Dane County will be in session again in 10 CV
13 1576, *the Matter of the Rehabilitation of the*
14 *Segregated Account of Ambac Assurance Corporation.*

15 I'm going to assume the appearances are
16 as they were this morning. We were in cross.

17 Mr. Ricardo, you may continue with Mr. Schacht.

18 MR. RICARDO: Thank you, Your Honor.

19 **CONTINUED CROSS-EXAMINATION:**

20 BY MR. RICARDO:

21 Q Welcome Back from lunch, Mr. Schacht.

22 A Thank you.

23 Q Do you recall before lunch testifying about an
24 Illinois statute that you said was essentially
25 identical to the Wisconsin Segregated Account

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1 statute?

2 A I don't think that is quite what I said, but it's

3 close to what I said.

4 Q Okay. Well, I'll give you that opportunity to
5 clarify. Is there an Illinois statute that you view
6 as having the same effect as Wisconsin's Segregated
7 Account statute?

8 A In part.

9 THE COURT: Just one moment. Would you
10 shut the back door.

11 BY MR. RICARDO:

12 Q Can you tell me what that statute is, the Illinois
13 statute?

14 A It's called the Separate Account Statute. I forget
15 the section number.

16 Q It's -- Is it part of Chapter 215, the Insurance Code
17 in Illinois?

18 A Yes.

19 Q Does Article XIV 1/2 ring a bell?

20 A No.

21 Q Okay. Does the -- Is the statute you have in mind
22 limited to certain types of insurance?

23 A Yes.

24 Q It does not, for example, include financial guaranty
25 insurance; is that right?

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1 A That's correct.

2 Q I think we're on the same page in terms of which
3 statute we're talking about, and I wanted to get to
4 the bottom of that. Okay.

5 Let me ask you to turn back to Exhibit
6 66, which is your affidavit. And in particular I'd
7 like to ask you some questions about Paragraph 32.
8 Are you with me?

9 A Yes.

10 Q Okay. You've stated financial guaranty insurance is,
11 quote, very specialized coverage; is that right?

12 A Yes.

13 Q And you specifically noted that regulators do not
14 have a great deal of experience in addressing
15 troubled financial guaranty insurers; is that right?

16 A Correct.

17 Q But in that case you stated that the focus of the
18 regulator must be on doing what is in the best
19 interest of policyholders; am I right about that?

20 A I don't see quite where you're reading from. Maybe I
21 didn't go far enough. But I don't disagree with that
22 statement.

23 Q Okay. That's fine. When you were a regulator in
24 Illinois, can you tell me how many financial guaranty
25 companies the state of Illinois regulated that were

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1 domiciled in Illinois?

2 A Setting aside that mortgage guaranty is not financial
3 guaranty?

4 Q Yes. I'm drawing a distinction between mortgage
5 guaranty insurance and the financial guaranty
6 insurance that Ambac wrote.

7 A That's a difficult question to answer, and I'll tell
8 you why. Because when you look at some of these
9 financial guaranty products, they also could be
10 written as surety products. And we had countless
11 companies that wrote surety.

12 Q But do you understand there's a distinction between
13 surety policies and financial guaranty policies?

14 A I could, as I sit here right now, could probably not
15 give you an explicit answer to that. If I was given
16 a few minutes to think about it --

17 Q Are you able to identify for me a single company that
18 was domiciled in Illinois that was licensed to issue
19 financial guaranty insurance policies specifically
20 while you were Regulator?

21 A There were none.

22 Q So I take it when you were Regulator you had no
23 experience with delinquency proceedings involving a
24 financial guaranty insurer; is that correct?

25 A No one in the country did.

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1 Q But Ambac is domiciled in Wisconsin, right?
2 A **That's correct.**
3 Q And would you agree that Wisconsin's OCI has more
4 experience than most other state regulators in
5 addressing the complicated issues that face financial
6 guaranty insurers?
7 MR. BRODY: Objection. Argumentative.
8 MR. RICARDO: I don't think I'm arguing
9 with anyone. I'm asking him to him to acknowledge
10 whether Wisconsin's OCI has more than experience in
11 this particular area than other Regulators.
12 THE COURT: Overruled.
13 THE WITNESS: I would not disagree with
14 that.
15 BY MR. RICARDO:
16 Q Because Wisconsin's Regulators have such experience,
17 do you acknowledge that the Wisconsin Regulators are
18 in a better position than Regulators in many other
19 states to address the complex issues and problems
20 that face troubled financial guaranty insurers?
21 A **No.**
22 Q Do you think everyone's equally qualified to handle
23 that?
24 A **From a receivership failing company standpoint, yes.**
25 Q Okay. Turning back to your affidavit in Paragraph

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1 37, you've also stated that the nature of appropriate
2 regulatory action for a trouble insurer varies
3 depending on the circumstances; is that right?
4 A **That's what I've written.**
5 Q Okay. But the purpose of regulatory action is to
6 minimize losses and to protect policyholders; is that
7 right?
8 A **Correct.**
9 Q Is it fair to say that there's no one-size-fits-all
10 approach to the problem of a troubled insurer?
11 A **Well, as I hope I testified this morning, there are
12 basic principles that underlie any approach to
13 resolving the problems of a troubled insurer.**
14 Q But is there one solution that applies to all trouble
15 insurers? That's my question. Or do you think that
16 regulators need to bring innovative approaches to
17 bear?
18 A **I agree with that.**
19 Q Okay. And in order to do that do you agree that
20 regulators need to be given considerable discretion
21 to choose the best course of fashioning a remedy?
22 A **So long as that discretion does not take them outside
23 the bounds of the basic principles that I talked
24 about before, and that is fair and equitable
25 treatment of policyholders.**

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1 Q And so long as that discretion is exercised within
2 the bounds of the applicable statutes; you'd agree
3 with that?
4 A **Correct.**
5 Q Is it also true that in considering a course of
6 action a regulator needs to find one that serves the
7 interest of policyholders as a whole; is that fair?
8 A **Yes.**
9 Q The proper focus is not on particular -- a particular
10 policyholder; is that right?
11 A **I hope not. I hope not. No.**
12 MR. RICARDO: Could I hear the question
13 and answer back, please.
14 (Previous question and answer read.)
15 BY MR. RICARDO:
16 Q And I'm -- I was a little confused by your answer.
17 My question is: Is it correct that the focus of a
18 regulator should not be on a particular policyholder?
19 A **I would say yes, on a qualified basis. There are
20 situations where there's only one policyholder.**
21 Q But with the exception of the situation in which
22 there's only one policyholder would you agree with
23 the statement I made before?
24 A **Yes.**
25 Q Do you agree that unlike individual policyholders

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1 regulators are not self-interested in the approaches
2 that they recommend?
3 A **Unfortunately there have been times where local
4 considerations have overridden some of these basic
5 principles that I tried to state before.
6 Fortunately, before those plans got too far, they
7 were halted and corrected and put on the right
8 course.**
9 Q And I recognize you've criticized the Plan here, but
10 is one of your criticisms that local considerations
11 in the State of Wisconsin have caused a distortion of
12 OCI's priorities? Is that your testimony?
13 A **After sitting here for four days I have not heard
14 what I would consider appropriate, valid reasons for
15 the Plan that has been offered.**
16 Q And I understand that. I've heard your direct
17 testimony. But my question is slightly different.
18 My question is whether you think local considerations
19 in Wisconsin have caused a distortion in the
20 regulators priorities.
21 A **Well, embedded in my last answer was the fact that I
22 don't know what is motivating this Plan.**
23 Q So I take it there's no local consideration you're
24 able to identify for me that you see as the source of
25 the problem; is that right?

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1 MR. BRODY: Objection. Asked and
2 answered.
3 THE COURT: Overruled. I think we're
4 getting there, but we're not there yet.
5 THE WITNESS: Can I hear the question
6 again.
7 (Previous question read.)
8 THE WITNESS: I cannot identify local,
9 national, international reasons.
10 MR. RICARDO: Okay. I'd like to mark
11 another exhibit now. I think we're up to 68. Should
12 I hand this to the Court officer?
13 THE COURT: The Court officer will pick
14 it up, bring it up.
15 (Exhibit 68 marked for
16 identification.)
17 BY MR. RICARDO:
18 Q Do you have Exhibit 68 in front of you?
19 A **I do not.**
20 THE COURT: All right.
21 BY MR. RICARDO:
22 Q Exhibit 68 is an article in which you're a co-author.
23 I won't read the entire title, but the beginning is
24 "Analyzing the Life Cycle of an Insolvency"; is that
25 right?

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1 (Phone call disconnects.)
2 MR. RICARDO: I realize you may have
3 lost track of my question with the interruption, so
4 I'd ask if it could be read back.
5 THE COURT: Do you want to wait a moment
6 until we get the telephone people.
7 MR. RICARDO: I apologize, Your Honor.
8 THE COURT: All right. Do we have the
9 telephone connection back now?
10 THE OPERATOR: We do, Your Honor. This
11 is the operator. I do apologize for technical
12 difficulties.
13 THE COURT: All right. Continue then.
14 MR. RICARDO: Thank you. We were in
15 interrupted by a difficulty with the telephone;
16 perhaps it would make sense if my question is read
17 back.
18 (Previous question read back.)
19 BY MR. RICARDO:
20 Q I direct your attention, sir, to the fourth paragraph
21 in which you wrote, "When a company is found to be
22 insolvent, liquidation may not be the most effective
23 method of maximizing available assets to meet the
24 claims of policyholders"; have I read your words
25 correctly?

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1 MR. BRODY: Can we have the rest of the
2 sentence, the bullet point?
3 THE COURT: Well, let's answer this, and
4 then we'll see. Did you break that in half sentence
5 or --
6 MR. RICARDO: No. I read a complete
7 sentence.
8 THE COURT: All right. Then we'll --
9 the complete sentence can be -- Do you have it?
10 THE WITNESS: Yes. That is what I
11 wrote.
12 BY MR. RICARDO:
13 Q And because liquidation may not be the most effective
14 method of maximizing available assets, you said in
15 the next sentence, "Stakeholders are not encouraged
16 to develop alternative solutions." I take it when
17 you said that you were referring to what happens in a
18 liquidation; is that right?
19 A **In that sentence I wasn't particularly referring to
20 liquidations. I was referring to any situation in
21 which the insurer is troubled and unable or perhaps
22 unable to meet its obligations, and the desirability
23 and, in fact, necessity to bring in stakeholders, and
24 by stakeholders I mean policyholders, to craft
25 solutions that would be in the best interest of those**

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1 **policyholders.**
2 Q Okay. Let me ask you about the next bullet point
3 which -- in which you write, quote, "In certain
4 circumstances companies are placed into liquidation
5 proceedings when alternative resolutions might be
6 possible and less costly." Have I read your words
7 correctly here?
8 A **Yes.**
9 Q In your experience have alternatives to liquidation
10 generally been less costly than liquidation?
11 A **It's hard to answer that question generally.**
12 Q But certainly you've written that alternative
13 resolutions might be less costly; is that fair?
14 A **Yes. And I think the important word is might.**
15 Q Okay. I want to ask you about your involvement in
16 the Main Insurance Company rehabilitation proceedings
17 in Illinois; do you recall that?
18 A **Yes. It's over 30 years ago.**
19 Q All right. At the time the Complaint was filed is it
20 fair to say that there was a substantial question
21 about the solvency of the insurer?
22 A **You know, as I said, it was over 30 years ago. I
23 don't remember, other than the name and I recognize
24 the name and recognizing the fact that I was
25 involved, I don't remember specifics.**

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1 Q Well, let me see if I can refresh your memory with
2 something that you said about it more recently. Let
3 me mark as Exhibit 69 some testimony that you gave in
4 another proceeding.
5 (Exhibit 69 marked for
6 identification.)
7 BY MR. RICARDO:
8 Q Do you have Exhibit 69 in front of you?
9 A **Ido.**
10 Q Although I think the title of the proceeding might
11 have been distorted in the Westlaw printout, this is
12 a report of testimony you gave in *Trustmark v.*
13 *General* on August 12th, 2000. First, do you recall
14 testifying in the *Trustmark* case?
15 A **Ido.**
16 Q Let me ask you to turn to Page 19, if you follow the
17 page numbers in the upper right-hand corner. And if
18 you look at the last question on the left column
19 you'll see that the question concerns the Main
20 transaction, the Main Insurance Company. Do you see
21 that, sir?
22 A **The one at the very bottom?**
23 Q Of the left column. Yes.
24 A **Yeah, I have it.**
25 Q Now, if you'll follow with me to the continuation of

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1 the testimony into the right question -- into the
2 right column, you were asked about the solvency of
3 the insurance company at the time. Do you see that?
4 A **Yes. I'm in the item -- I don't know where exactly**
5 **you want me to focus on the right-hand column. But I**
6 **see it.**
7 Q And in the *Trustmark* case were you asked the
8 following question and did you give the following
9 answer:
10 "Q An in that transaction there
11 was -- there had, by the time you got involved in it,
12 this was an insolvent company; is that correct?"
13 And the answer was:
14 "A That determination had not been
15 made, but there were certainly substantial questions
16 about its solvency."
17 A **Yes.**
18 Q So using your language --
19 MR. BRODY: I'm sorry, I object. The
20 purpose of this was to refresh recollection. Unless
21 it's refreshed his recollection it's hearsay and I
22 would object to it.
23 BY MR. RICARDO:
24 Q Well, does this refresh your recollection about
25 whether -- about the solvency of the insurer at the

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1 time the proceeding was commenced?
2 A **No.**
3 Q Was -- In your view was the insurer, Main,
4 approaching insolvency at the time rehabilitation
5 proceedings were commenced?
6 A **I believe that's correct, the more I've thought about**
7 **it, yes.**
8 Q Okay. So your recollection is refreshed now?
9 A **Somewhat, yeah.**
10 Q So in the case of the Main Insurance Company, when
11 you were a regulator you determined that it was
12 appropriate to file a rehabilitation proceeding at a
13 time when a company was approaching insolvency; am I
14 correct about that?
15 A **That's certainly what we did, yes.**
16 Q And just to ask a few more questions about the main
17 proceeding. Some time elapsed between the
18 commencement of rehabilitation and a subsequent
19 filing OF a petition for liquidation; is that right?
20 A **That's correct.**
21 Q Was the time that elapsed three years and ten months?
22 A **That sounds about right.**
23 Q I want to ask you about a different document now, one
24 that's attached to your affidavit. Does Exhibit
25 66 -- Do you have Exhibit 66 in front of you? It was

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1 your affidavit.
2 A **Yes, I have it.**
3 Q Do you have a copy that has the exhibits and
4 attachments to your affidavit?
5 A **Ido.**
6 Q Okay. Let me ask you to turn to Exhibit D to your
7 affidavit, which is an NAIC white paper entitled
8 Alternative Mechanisms for Troubled Companies.
9 A **Yes, I have it.**
10 Q Do you have that? Okay. This morning you identified
11 a core group of documents that you saw as
12 articulating and embodying the fundamental principles
13 of dealing with receivership. Is this NAIC white
14 paper one of the documents to which you were
15 referring this morning?
16 A **Yes. I think I mentioned this one specifically.**
17 Q Okay. I'd like to ask you then about some of the
18 principles that are articulated in this NAIC white
19 paper. In particular, let me direct you to Page 3.
20 And just to orient you and everyone listening, you're
21 talking about advantages and disadvantages for
22 utilizing alternatives mechanisms for the troubled
23 companies. Alternatives to what? What were you
24 referring to here?
25 A **Alternatives to traditional methods such as**

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1 **receivership -- well, not receivership, but**
2 **rehabilitation, liquidation, conservation.**

3 Q So just to be clear, one of the traditional
4 alternatives you were contrasting these alternatives
5 with was a liquidation; am I right about that?

6 A **When you say "me" or "you" --**

7 Q Forgive me.

8 A **-- this is not me. This is the NAIC.**

9 Q Fair point. Fair point. Let me rephrase the
10 question.

11 If you look at the first bullet point
12 under advantages on Page 3, you see that the NAIC
13 white paper states, quote, "Alternative mechanisms
14 can be useful tools for a trouble insurers management
15 and regulators, potentially leading to a quicker
16 resolution than traditional receivership." Do you
17 agree with that principle?

18 A **Yes.**

19 Q And I wanted to ask you about one of the alternative
20 mechanisms that's discussed in more detail on Page 5,
21 if you'll turn with me to that. You see on Page 5
22 there's a discussion of a runoff of a trouble
23 insurer. Do you see that?

24 A **Yes.**

25 Q Okay. And in describing what this alternative is,

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1 the first sentence on Page 5 reads, quote, "A
2 troubled company runoff is usually a voluntary course
3 of action where the insurer ceases writing new
4 business on all lines of business but continues
5 collecting premiums and paying claims as they come
6 due on existing business. Have I read that
7 correctly?"

8 A **Yes.**

9 Q Do you agree with the white paper that this
10 alternative course of a runoff of a troubled insurer
11 potentially leads to a quicker resolution than
12 traditional receivership?

13 A **I think you have to understand that in this sentence
14 that it's talking about the entirety of the company
15 not a General Account, Segregated Account, or any
16 other account.**

17 Q Understood. But if you focus just on what's
18 happening with the Segregated Account, isn't it
19 precisely what's described in the first sentence on
20 Page 5 of the NAIC white paper?

21 A **But this white paper does not talk about Segregated
22 Accounts. It's a -- this concept -- and I've tried
23 to get this across in my affidavit -- is completely
24 foreign to the regulatory structure nationally in
25 this country. And as I also point out, there will be**

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1 **ramifications for pursuit of such structures.**

2 MR. RICARDO: Let me move to strike that
3 answer as not responsive.

4 MR. BRODY: I oppose the motion.

5 THE COURT: Well, just a moment.

6 MR. BRODY: I oppose the request to
7 strike.

8 THE COURT: All right. I will sustain
9 the objection and strike the answer as nonresponsive.

10 BY MR. RICARDO:

11 Q Do you understand -- I realize you're not a lawyer,
12 and my intention is not to drill you on legal
13 matters, but do you understand the Wisconsin
14 segregated account insurance statute a segregated
15 account for the purposes of rehabilitation is deemed
16 to be a separate insurer?

17 A **That's what it says.**

18 Q Okay. So focusing on the Segregated Account as a
19 separate insurer for purposes of rehabilitation, do
20 you agree that the alternative that we've looked at
21 in the first sentence of Page 5 of the NAIC white
22 paper runoff of troubled insurer is what OCI has
23 proposed for the Segregated Account?

24 A **No.**

25 Q And how is OCI's approach for the Segregated Account

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1 different from what's described in the first
2 sentence?

3 A **If you read the entirety of this white paper, you
4 will come to the conclusion that it's talking about
5 the entirety of the company's book of business, all
6 of its policyholders, how they should be treated,
7 that they should not be put at risk, that policy
8 provisions should be met, and benefits in their
9 entirety. That's what this paper is all about.**

10 MR. RICARDO: I'll move to strike that
11 answer as not responsive to my question which dealt
12 simply with the treatment of the Segregated Account.

13 MR. BRODY: Your Honor, I object to the
14 motion. The question was how does this not apply,
15 and he explained how it doesn't apply. The rest is
16 for closing argument.

17 THE COURT: I'll sustain that objection.
18 Strike the motion -- or strike the -- Excuse me,
19 not -- Your request is stricken; you're sustained.

20 MR. RICARDO: That's fine.

21 THE COURT: Indicate on the record I did
22 identify the attorneys with my hands.

23 MR. BRODY: Your Honor, I think I
24 understand, but did I win that one or did I lose that
25 one?

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1 THE COURT: Well, why don't you chat
2 about that while we go on. You won it.
3 MR. BRODY: Okay. Perfect.
4 MR. RICARDO: That's what I had
5 understood, and I was looking to move on.
6 MR. BRODY: Great.
7 MR. RICARDO: Okay. Let me mark another
8 document at this time. Oh, no, I'm sorry, looks like
9 we've already marked it as Exhibit 48.
10 Q Do you have Exhibit 48 in front of you?
11 A Yes.
12 Q Okay. And Exhibit 68 is an article in which you're a
13 co-author where the start of the headline is
14 "Analyzing the Life Cycle of an Insolvency"; do I
15 have that right?
16 A Yes.
17 Q Let's look at the first line there. You've written,
18 quote, "The principle public policy objective of an
19 insurance insolvency proceeding is to return to
20 policyholders and claimants as much as possible of
21 their claims as quickly as possible." Have I read
22 your words correctly?
23 A Yes, you have.
24 Q Okay. And you go on on Page 3 to address the effect
25 of liquidation orders in your experience. I wanted

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1 to ask you about a paragraph that appears in the
2 middle. It begins, "The entry of a liquidation
3 order." Do you see that?
4 A Yes.
5 Q And I'll read the full sentence into the record.
6 Quote, "The entry of a liquidation order cancels all
7 in-force policies, and the rights of policyholders
8 and claimants are fixed as of the liquidation date."
9 Now, I'm not asking you to give an
10 opinion on Wisconsin law, but what has what you've
11 written there been consistent with your experience as
12 a regulator and sometimes a liquidator?
13 A I cannot think of a situation as I sit here where a
14 liquidation order has had a -- an effect other than
15 what I've stated here.
16 Q And in your experience when there's been a
17 liquidation order unearned premiums have been
18 returned; has that been your experience?
19 A Yes.
20 Q And the policyholders whose policies are canceled
21 have faced uncertainty in those circumstances; is
22 that true?
23 MR. DEVORE: Objection. No foundation
24 for the cancellation part of that question.
25 THE COURT: Overruled.

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1 THE WITNESS: If by uncertainty you mean
2 that they no longer have insurance in force with this
3 particular company, that's the consequence.
4 BY MR. RICARDO:
5 Q So they need to get new insurance or go without
6 insurance; is that right?
7 A Yes.
8 Q Have you considered -- Strike that. Let me phrase it
9 this way: In the case of Ambac is it true that the
10 vast majority of the policyholders in both the
11 Segregated Account and General Account are
12 policyholders that do not have current claims?
13 A That's what I heard over the last four days.
14 Q Have you studied that or are you just accepting --
15 A I've seen it in the Disclosure Statement and perhaps
16 some other places.
17 Q So I take it you have no reason to dispute that
18 statement?
19 A That's correct.
20 Q Let me turn back to your affidavit, which is Exhibit
21 66. There are a number of cases in your affidavit in
22 which you refer to treating policyholders equally,
23 and I want to ask you about those.
24 First let me ask you about Paragraph 33.
25 Do you see in the last line of Paragraph 33 you've

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1 referred to a doctrine of equal treatment of
2 policyholder obligations?
3 A Yes.
4 Q And I can show you other examples, but is it your
5 recollection that you refer to equal treatment of
6 policyholders in other places in your affidavit?
7 A I believe that's correct.
8 Q Do you know whether Wisconsin's rehabilitation
9 statute requires equal treatment or equitable
10 treatment?
11 A I think the words are fair and equitable.
12 Q Fair and equitable is also the term used in the
13 Illinois receivership statute; is that right?
14 A I believe that's correct.
15 Q In your analysis in this matter do you assume that
16 equal and equitable mean the same thing?
17 A Perhaps I should explain how I use those words.
18 Q Well, I think this question is capable of being
19 answered as a yes or no. Are you making the
20 assumption that equitable means the same thing as
21 equal?
22 A I can't answer that question.
23 Q Is there a difference in your mind in the meaning of
24 equal and the meaning of equitable?
25 A I think the term equitable encompasses the term

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1 equal.
2 Q Can something be unequal yet be equitable?
3 A **In the context of insurance receivership?**
4 Q Yes.
5 A **No.**
6 Q So you equate the two -- Let me rephrase that. The
7 assumption you've made in your analysis is that
8 unequal treatment is inequitable treatment --
9 A **Correct.**
10 Q -- is that a fair statement?
11 A **That's correct.**
12 Q In Exhibit B to your affidavit, which is Exhibit 66,
13 you identified certain materials that you reviewed in
14 connection with this engagement; is that right?
15 A **Correct.**
16 Q And three of the bullet points on the second page are
17 various decisions in what's sometimes called the
18 Carpenter case or the Pacific Mutual Life Insurance
19 case. Are you familiar with that decision from many
20 decades ago?
21 A **Yes.**
22 Q Did you consider -- and I realize you are not a
23 lawyer, but I take it you have some familiarity with
24 it as a regulator?
25 A **Yes. It's one of the few decisions out of the**

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1 **supreme court, it may be the only one, that's of**
2 **particular significance to insurance receiverships.**
3 Q So you took that into account in formulating your
4 opinions in this matter; is that right?
5 A **Yes.**
6 Q Is it your testimony that in the Carpenter case
7 policyholders were treated exactly equally?
8 A **And, again, you know, I didn't go back, even though**
9 **they're listed here, you know, it had been some time**
10 **since I had reviewed them, and I'm not sure I went**
11 **back and reviewed each one. But one of the holdings**
12 **of the Carpenter case was that policyholders were**
13 **entitled to liquidation value, which is why**
14 **liquidation analysis is so important, and that if**
15 **they don't desire to go along with a plan, they're**
16 **entitled to opt out and get they're liquidating**
17 **value -- or liquidation value.**
18 MR. RICARDO: I'll move to strike that
19 answer as not responsive to my question.
20 MR. VAN SICKLEN: Join. Calls for a
21 legal analysis of a case, and he's not a lawyer.
22 MR. BRODY: I'm sorry, is that an
23 objection to the question or the answer?
24 MR. VAN SICKLEN: I said I join the
25 motion to strike.

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1 MR. BRODY: Well, then I would oppose
2 that, because it's responsive to the question. A
3 nonlawyer was asked for his views how this case
4 implicated his opinions, and he gave it to him.
5 THE COURT: The motion to strike will be
6 granted.
7 BY MR. RICARDO:
8 Q And rather than read back the question, let me try to
9 ask it again, just to make crystal clear that I'm not
10 asking you a legal conclusion.
11 Are you familiar with what the plan that
12 was being discussed in the Carpenter case called for?
13 A **In order to answer that question I would have to -- I**
14 **would just be probably relying on my faulty memory.**
15 **But, I mean, I can do that.**
16 THE COURT: Your answer's no then?
17 THE WITNESS: Yes, no.
18 THE COURT: All right.
19 BY MR. RICARDO:
20 Q And just on the off chance at that it might refresh
21 your recollection, I'll ask you something more
22 specific about the Carpenter case.
23 Is it your testimony that the plan that
24 was confirmed and approved in the Carpenter case and
25 upheld by the supreme court treated all policyholders

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1 equally?
2 A **I don't recall.**
3 Q You don't know the answer to that question?
4 A **I said I don't recall.**
5 Q Would the answer to that question be important to
6 regulators in formulating their general principles
7 about rehabilitation proceedings?
8 A **It's those decisions that have formulated these basic**
9 **decisions -- or basic principles, rather, about the**
10 **conduct of receiverships in this country.**
11 Q Before the break you gave some testimony about the
12 Triad matter, and I don't want to ask you detailed
13 questions about that, but I thought there were a few
14 points about the case that could be worth clarifying.
15 You mention that Triad had been involved
16 in mortgage guaranty insurance; am I right about
17 that?
18 A **Correct.**
19 Q Was it involved in financial guaranty insurance of
20 the type that Ambac issued?
21 A **No.**
22 Q Was Triad a rehabilitation proceeding?
23 A **No.**
24 Q You mentioned that there was an effort to reach out
25 to the various stakeholders and constitutes in Triad;

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1 do you know how many of them there were?
2 A More than a hundred.
3 Q It was more than a hundred? Was it as many as
4 15,000?
5 A How are you counting -- Let me explain my answer.
6 Q Well, let me ask you a different question. You
7 talked about an effort to reach out and negotiate
8 with stakeholders; to how many parties -- how many
9 parties were reached out to?
10 A As I said this morning, the major two creditors were
11 Fannie and Freddie, and we had been all along
12 providing them with information about the book, the
13 portfolio mortgage loans, as well as others. Now, I
14 don't remember exactly but, you know, we didn't --
15 there was also a group of holders of our policies,
16 mortgage guaranty insurance policies, you know, local
17 savings and loans and some banks that held some
18 certificates on the mortgages that they had granted.
19 You know, we didn't reach out to those people when we
20 were formulating a plan or provide them with detailed
21 information. But they certainly got notice of what
22 we were intending to do. And as I said this morning,
23 no one objected. And they were given full
24 opportunity to object to what we were doing. And you
25 have to contrast that to what's happening here, where

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1 we have an audience full of objectors.
2 Q Well, let me ask you about that. Just to clarify
3 your answer, the -- there were only two major
4 stakeholders that were the focus of your reach-out
5 efforts; is that right?
6 A No. I think you misunderstood my answer. I said the
7 two majors, I'm going to use the word creditors, were
8 Fannie Mae and Freddie Mac. They by far held the
9 largest part of the exposure. It dropped off from
10 there, and I forget the order, but it included
11 Countrywide, Wells Fargo, and some others. But --
12 And I don't remember the numbers offhand.
13 Q But, in any event, not all policyholders were
14 contacted; is that right?
15 A There was a -- When we got to the point of the --
16 when the Insurance Department was going to hold the
17 public hearing on this dramatic step of modification
18 of these mortgage guaranty contracts, they sent out a
19 notice, required us to send out notice to all of our
20 holders of our mortgage loan guaranty certificates as
21 well as public notice. Everyone got notice. Several
22 appeared. But they appeared to primarily compliment
23 the Plan.
24 Q I think we're misunderstanding each other, Mr.
25 Schacht. Is it your testimony that policyholders did

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1 not receive notice of this hearing that we're in
2 here? Is that your opinion?
3 A I'm answering questions.
4 Q Well, let's try that question.
5 MR. RICARDO: Could you read it back.
6 (Previous question read.)
7 THE WITNESS: You were asking me about
8 Triad, not about this proceeding, and I answered with
9 what happened in Triad.
10 BY MR. RICARDO:
11 Q Understood. But are you giving an opinion
12 criticizing the notice that was provided as to the
13 confirmation hearing that we're sitting in now?
14 A Well, I think there's something to criticize, and
15 that is, you know, in the case of our largest
16 creditors they had received quite a bit of
17 information about how we saw -- and when I say we,
18 you know, I don't want to take a bigger part of
19 whatever congratulations may be due for the success
20 of this plan, because there's certainly others
21 involved -- but they got a lot of information about
22 our portfolio where we saw or portfolio going from a
23 loss standpoint and, you know, they certainly didn't
24 get it all. They had signed confidentiality
25 agreements, and so we had provided this data in

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1 confidence. We had face-to-face meetings with them.
2 So you know, they received a lot of information.
3 MR. VAN SICKLEN: Object and move to
4 strike. The question pertained to this proceeding
5 and the witness answered a different question?
6 THE COURT: That is correct. Can you
7 answer the question as it relates to this proceeding?
8 Try reading it back one more time and just answer the
9 question that's asked.
10 (Previous question read.)
11 THE COURT: That's a yes or no.
12 THE WITNESS: Yes.
13 BY MR. RICARDO:
14 Q And what is your criticism of the notice that was
15 provided of the confirmation hearing that occurred
16 this week?
17 A Well, it's many and varied. For one, no one has
18 received a fair and complete liquidation analysis.
19 No one has received precise procedures as to how loss
20 claims are going to be evaluated. And those are a
21 couple that immediately come to mind.
22 Q Was a liquidation analysis provided in the Triad
23 matter?
24 A Yes.
25 Q Was provided to all policyholders?

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1 A I don't believe so. But there was no need to provide
2 it.
3 Q Let me just ask you a simple question. I think it's
4 susceptible to a yes-or-no answer. In the Triad
5 matter a liquidation analysis was not provided to all
6 policyholders; is that right?
7 A I don't recall. One was created --
8 THE COURT: You've answered the
9 question.
10 BY MR. RICARDO:
11 Q Did the mortgage guaranty policies at issue in Triad
12 have contractual triggers that would cause a default
13 based on the financial condition of the insurer?
14 A Not that I recall.
15 Q Let me get back to a subject I asked you about
16 earlier about your opinions on equal treatment of
17 policyholders and whether that's different from
18 equitable treatment of policyholders. Again, I know
19 you're not a lawyer, but you might be familiar with
20 how certain rehabilitation matters were handled.
21 Are you familiar with the Mutual Benefit
22 Life Insurance Company rehabilitation in New Jersey?
23 A Vaguely.
24 Q Do you know that several books of business were
25 assumed by third parties in that matter?

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1 A I believe that's correct.
2 Q And are you aware that the books of business that
3 were assumed by third parties were paid a hundred
4 cents on the dollar?
5 A Yes. But you have to remember --
6 Q Mr. Schacht, I just asked you if you were aware
7 whether those businesses were paid a hundred cents on
8 the dollar.
9 A They were.
10 Q Was there another book of business that was not
11 assumed by a third party?
12 A I believe that's correct.
13 Q And was it the case that that book of business not
14 assumed by a third party, for that book policyholders
15 receives 88 cents on the dollar; is that right?
16 A I don't remember the percentage. You probably are
17 correct with regard to 88 and a half percent.
18 Q It was less than a hundred cents on the dollars,
19 correct?
20 A I believe that's correct.
21 MR. RICARDO: I want to mark a new
22 exhibit. I think we were up to Exhibit 70.
23 (Exhibit 70 marked for
24 identification.)
25

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1 BY MR. RICARDO:
2 Q Do you have Exhibit 70 in front of you?
3 A I do.
4 Q Okay. Exhibit 70, for the record, is 215 ILCS, which
5 I assume stands for Illinois Consolidated Statutes
6 5/193. Is this a statute with which you were
7 familiar when you were a regulator in Illinois?
8 A Yes.
9 Q In particular were you familiar with (4)?
10 A Yes.
11 Q And is it fair to say that in effect (4) permitted in
12 the context of a liquidation the insurance director
13 to solicit third parties to come in and assume
14 contracts that had been issued by the insolvent
15 insurer?
16 A Yes.
17 Q Could the director do that without the consent of the
18 counterparty to that contract?
19 A At what point in time?
20 Q Well, at the point in time when the statute becomes
21 effective when the contract is canceled by
22 liquidation; at that point in time could the director
23 step in and effectively assign that contract to a
24 third party?
25 A That's correct.

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1 Q Were you ever involved in application of (4) that
2 we've been discussing?
3 A I can't recall one as I sit here.
4 Q Okay. Did you ever hear of -- did you ever hear of
5 (4) being implemented while you were a regulator?
6 A As I said, as I sit here I don't recall.
7 Q Okay. I want to turn to some of your specific
8 criticisms of the Plan of Rehabilitation that's been
9 offered here. A number of them were in your
10 affidavit, but, obviously, you've sat through this
11 hearing and listened to the testimony, so I want to
12 go through them and see if perhaps some of them are
13 addressed or your testimony may be that they're not.
14 Let's take a look at -- Let's go back to
15 your affidavit which is Exhibit 66. And in
16 particular I want to ask you about Paragraph 46-A.
17 And your criticism in 46-A was that the Plan and
18 support material do not contain any disclosure or
19 information with respect to liquidation value or that
20 the OCI even performed such a calculation. Have I
21 read your -- at least the first sentence of your
22 critique correctly?
23 A Yes.
24 Q All right. Now, since you submitted this affidavit
25 the OCI has put forward some additional analysis of

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1 liquidation value in Amendment Number 2; is that
2 correct?
3 A **They did. But we don't know who prepared it.**
4 Q I understand that. I'm just trying to establish that
5 they've at least addressed your critique in part. Is
6 that fair?
7 A **Yes.**
8 Q Have you performed your own liquidation analysis of
9 Ambac?
10 A **I, as I think I indicated before, I do not have**
11 **access nor would I consider myself completely**
12 **qualified to in this case to do a liquidation**
13 **analysis and produce a liquidating value.**
14 Q So you have not done one, correct?
15 A **That's correct.**
16 Q Okay. In your direct testimony you had some
17 critiques about the Liquidation Analysis, and I'd
18 like to ask you about them.
19 One of your critiques was that in
20 listing the assets of Ambac there was no accounting
21 for the value of certain technology systems; did I
22 understand that correctly?
23 A **Yes.**
24 Q And you testified that in Triad the value of those
25 systems was in the neighborhood of several million

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1 dollars; am I correct about that?
2 A **That's my recollection.**
3 Q Do you view that as a material amount in the context
4 of Ambac's Rehabilitation?
5 A **Given the state of this company, my materiality**
6 **standards have shrunk considerably.**
7 Q I'm not sure that answered my question.
8 MR. RICARDO: Could you read that back?
9 I can ask it again just to save time.
10 Q In the context of Ambac's rehabilitation, do you
11 believe that the value of Ambac's computer system is
12 a material asset?
13 A **As I said, given the state of these two companies --**
14 **and when I say two, I mean its parent and AAC -- I**
15 **think million of dollars, if, in fact, that's the**
16 **appropriate number, is material.**
17 Q Okay. So in your view several million dollars is
18 material in its rehabilitation; do I have that right?
19 A **Yes.**
20 Q Okay. You had a criticism about the liability side
21 of the balance sheet, in particular relating to the
22 bank group settlement; am I right about that?
23 A **That's correct.**
24 Q And your view was that the Liquidation Analysis
25 should take into account the benefits of that

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1 settlement; is that right?
2 A **I don't believe that's what I said. But if I can add**
3 **to that answer.**
4 Q Well, let me ask you a different question instead.
5 Is your critique that the liabilities to the bank
6 group that were eliminated in the bank group
7 settlement should not be considered in a Liquidation
8 Analysis?
9 A **Could you read that back, because I missed, I think,**
10 **an important word.**
11 **(Previous question read.)**
12 MR. DEVORE: Your Honor, I object to the
13 question as vague as to time frame. When are you
14 looking at the Liquidation Analysis? March 24th or
15 today?
16 THE COURT: Response, Mr. Ricardo?
17 MR. RICARDO: Well, my response is I
18 think our position is clear that the Liquidation
19 Analysis should be considered on March 24th when
20 those liabilities still existed. My understanding of
21 the direct testimony was that Mr. Schacht was
22 critiquing the analysis on the theory that he counted
23 those as -- that he counted claims of the bank group
24 as liabilities and that it should not have.
25 THE COURT: So the time frame is

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1 March --
2 MR. RICARDO: That's what we think the
3 right time frame should be. I'm trying to ask what
4 his analysis is.
5 THE COURT: All right. Overrule the
6 objection.
7 BY MR. RICARDO:
8 Q And just to clarify, just to clarify the question,
9 are you saying that OCI made a mistake by counting
10 the claims of the bank group that existed before
11 March 24th as part of the liabilities of the company?
12 MR. DEVORE: Same objection.
13 THE COURT: Overruled.
14 THE WITNESS: I feel that the
15 Liquidation Analysis should be done subsequent to the
16 bank group settlement. I know they did it prior, and
17 therefore it was appropriate to include those
18 numbers. I don't know if those are the right numbers
19 or not. But --
20 BY MR. RICARDO:
21 Q I think you've answer the question. So your
22 testimony is that when calculating the liquidation
23 value, OCI should assume that the bank group
24 settlement closed.
25 MR. DEVORE: Same objection. Also

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1 misstates the testimony.
2 THE COURT: Overruled.
3 THE WITNESS: Yes.
4 BY MR. RICARDO:
5 Q Okay. And do you realize that the companies that
6 have retained you have taken the position that that
7 bank group settlement never should have happened?
8 A **They may have. But as I understand it, and I heard**
9 **more than once as I sat and listened to testimony,**
10 **that that deal is done, closed, finalized.**
11 Q And your understanding is that it benefited the
12 company by eliminating billions of dollars of
13 liabilities; is that right?
14 A **I have no way of telling whether or not it was**
15 **advantageous, disadvantageous, neutral. I don't**
16 **know.**
17 Q But let me ask you this: In the Liquidation Analysis
18 you would conduct you would take out of the
19 liabilities column the \$12.9 billion in potential
20 liabilities to the bank group; am I correct?
21 MR. DEVORE: Objection. Vague as to
22 time frame.
23 THE COURT: Overruled.
24 THE WITNESS: Well, remember, if I start
25 at a later date, you know, after the conclusion of

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1 that settlement, there's nothing to take out. I
2 mean, it's no longer in the liabilities.
3 BY MR. RICARDO:
4 Q So the Liquidation Analysis that you think is a
5 proper one would not include an approximately \$13
6 billion liability to the bank group; am I right about
7 that?
8 A **That's correct.**
9 MR. DEVORE: Same objection.
10 THE COURT: Just A minute. I've got to
11 overrule him or he's going to feel bad. Overruled.
12 MR. DEVORE: Can I have just have a
13 continuing objection so I don't have to stand up
14 every time?
15 THE COURT: You certainly may.
16 MR. DEVORE: Thank you.
17 BY MR. RICARDO:
18 Q Am I also correct that the -- Strike that. Am I
19 correct that the Liquidation Analysis that you would
20 conduct would also not take -- would also put back
21 into the company the consideration paid to the bank
22 group?
23 A **Would not put back?**
24 Q If I used a double negative, I apologize. Let me
25 start again. The Liquidation Analysis you would

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1 recommend would omit from the -- Strike that.
2 The Liquidation Analysis that you would
3 conduct would put onto the asset side of the balance
4 sheet the consideration that was paid to the bank
5 group; is that right?
6 A **No.**
7 Q Okay. Why don't we move on. Let me ask you about
8 paragraph 45-C-1 of your report. Are you with me?
9 A **Yes, I have it.**
10 Q You see in the second sentence one of your critiques
11 is that personnel of Ambac are involved in the claims
12 administration process; have I summarized that
13 correctly?
14 A **No.**
15 Q No. Do you object to personnel of Ambac being
16 involved in the claim administration process?
17 A **No. They're essential.**
18 Q Okay. So that's actually a good feature of the
19 Rehabilitation Plan; is that right?
20 A **What I was criticizing is whose control they're**
21 **under.**
22 Q But as long as they're under OCI's control it's okay
23 with you?
24 A **But they're not under OCI's control.**
25 Q So your testimony is that OCI is not controlling the

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1 personnel at Ambac who are making decisions for the
2 Segregated Account; is that right?
3 A **Not from what I read in the Plan of Rehabilitation,**
4 **the Plan of Operation, the Disclosure Statement. In**
5 **order to have the sort of the control that I think is**
6 **necessary, it would necessitate the OCI**
7 **Commissioner -- or the Wisconsin Insurance**
8 **Commissioner being the Rehabilitator of both**
9 **accounts.**
10 Q I take it you heard the testimony by Mr. Peterson and
11 the Ambac witnesses about the relationship between
12 OCI and the company in terms of the Segregated
13 Account; is that right?
14 A **Yeah. And, frankly, I was somewhat shocked by that**
15 **testimony.**
16 Q Well, that wasn't what I asked you. I just wanted to
17 ask if you heard that testimony.
18 A **I heard it.**
19 Q And I take it nothing about that testimony changed
20 the opinion expressed in paragraph 45-C-1; is that
21 right?
22 A **Had I known what I heard, I would have added more.**
23 Q So you would have had additional criticisms?
24 A **Yes.**
25 MR. RICARDO: Let me see if we can mark

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1 a different exhibit. I think we're up to 71 now.
2 (Exhibit 71 marked for
3 identification.)
4 BY MR. RICARDO:
5 Q Is Exhibit 71 an article in which you are co-author
6 in which the headline is "Receiving Reform; the Way
7 Insolvencies are Done Just Doesn't Work in Today's
8 Complex Insurance Universe"?
9 A Yes.
10 Q And in this article you were critiquing, various
11 aspects of the way insolvencies typically function;
12 is that right.
13 A Yes.
14 Q Let me ask you to turn to Page 3 where you made some
15 suggestions about how to remedy that. And in
16 particular I'd like you to look at the paragraph that
17 begins "Allstate Guaranty Funds"; do you see that?
18 A Yes.
19 Q And if you look about halfway down the paragraph, you
20 wrote the following words, quote, "Alternatively the
21 guaranty funds could utilize the failed insurers'
22 claims personnel and systems," unquote. Did you
23 write those words?
24 A Yes.
25 Q So one of the suggestions you were making was using

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1 the insurer's personnel, correct?
2 A Correct.
3 Q And as a general matter you think it's a good idea to
4 try to do so; is that right?
5 A Absolutely.
6 Q Okay. Let me ask you to turn back to your affidavit,
7 which is Exhibit 66. And I wanted to ask you about
8 something else in Paragraph 45-C-1, but this is on
9 Page 19 of your affidavit. In particular I want to
10 ask you about the first full sentence on Page 19 in
11 which you wrote, quote, "Given that there may be
12 insufficient assets available to meet policyholders
13 obligations, the claim approval or denial process
14 should be public, transparent and under the oversight
15 of the Court." Have I read that correctly?
16 A Yes.
17 Q So you believe that the presentation processing of
18 claims should not be secret; is that right?
19 A That's correct.
20 Q There should be public disclosure of who is
21 presenting claims; is that right?
22 A Yes.
23 Q And in what amount; is that right?
24 A Yes.
25 Q There should be an identification of what the

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1 relevant policies are and the amount of the loss for
2 each claimant; is that right?
3 A Yes.
4 Q And because Ambac provided financial guaranty
5 insurance for bonds, that means there should be
6 disclosure of which bonds each claimant owns, right?
7 A I'm uncertain about that question, the answer to that
8 question.
9 Q So you think it's okay for some portion of the claims
10 approval or denial process to occur in secret; is
11 that your testimony?
12 A No. What I meant by my answer is I really hadn't
13 given sufficient -- I mean, you're really getting
14 down deep into the procedures that's followed with
15 respect to the claim processing approval process.
16 And I really hadn't thought that deeply into it as to
17 who all ought to be disclosed in this information
18 that I feel should be a public process.
19 Q Um-hum. But I take it your opinion is you'd err on
20 the side of public disclosure; is that fair?
21 A Well, I don't know if I'd say that. If it's -- we're
22 talking about the totality of the information, I'm
23 not certain.
24 Q Okay. Do you know the names of the funds that have
25 retained you to testify in this matter?

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1 A I know them, yes.
2 Q Do you know what bonds they own?
3 A Not precisely.
4 Q Have they ever told you when they purchased them or
5 what price?
6 A I didn't ask.
7 Q Have you ever read or seen the bond indentures for
8 the bonds that they own?
9 A I have not.
10 MR. BRODY: Objection. Relevance, Your
11 Honor?
12 MR. RICARDO: Well --
13 MR. BRODY: And it's also beyond the
14 scope of his prior opinion.
15 MR. RICARDO: Well, the opinion is that
16 the claim's approval process should be in the public
17 and transparent, and I guess what I'm trying to see
18 is whether he's willing to extend that opinion to the
19 hedge funds that was retained him yet apparently
20 don't want this process to be transparent.
21 THE COURT: Overrule the objection.
22 That's fair cross.
23 BY MR. RICARDO:
24 Q In your experience would a properly designed claim
25 approval process require the disclosure of the

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1 precise policies that are being claimed against?

2 A **Yes.**

3 Q If you were Regulator, which you were once a group of
4 hedge funds claiming to own insured bonds showed up
5 to criticize your plan and propose changes, would you
6 want to know their precise interest in the insured
7 bonds?

8 MR. BRODY: Object to the form of the
9 question, Your Honor.

10 THE COURT: Overruled.

11 THE WITNESS: I think I've already
12 answered that question.

13 BY MR. RICARDO:

14 Q Well, I am not sure I heard it. Would you want to
15 know that information or not?

16 A **I'm confused now by what information. The - You**
17 **asked in the prior question whether or not I**

18 **wanted -- I would want to know the policies under**
19 **which they were submitting claims. And I said yes.**

20 **And I don't know if you asked the follow-up question**

21 **or not. If you did, I didn't hear it.**

22 MR. RICARDO: Can you read back my
23 follow-up question, which is about interest and
24 bonds.

25 (Previous question read.)

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1 MR. GREENWALD: Objection, Your Honor.

2 This is David Greenwald, and I apologize for
3 tag-teaming over here. I just wanted to remind the
4 Court this is precisely the information that I
5 offered to file under seal at the beginning of this
6 hearing and what I've been offering to provide to
7 both Ambac and to OCI for some time.

8 MR. RICARDO: But you're not offering it
9 to put it in the public record, are you, Mr.
10 Greenwald?

11 MR. GREENWALD: I specifically did not.
12 The information we would provide would be
13 confidential and proprietary trading information.

14 THE COURT: All right. Overrule the
15 objection. I think this is an appropriate question,
16 given the context of the opinions this witness had
17 been expressing.

18 MR. RICARDO: Would you read back the
19 question at this point?

20 (Previous question re-read.)

21 THE WITNESS: Yes.

22 BY MR. RICARDO:

23 Q For example, you'd want to know if they sold the
24 insured bonds short and actually had an economic
25 interest in the bonds decreasing in value?

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1 MR. BRODY: Objection.

2 BY MR. RICARDO:

3 Q You'd wanted to know that, right?

4 MR. BRODY: Object to the question. It
5 calls for legal questions and it misstates the law.

6 THE COURT: Well, I don't know that's
7 necessarily the law. The question wasn't a law
8 question, it was whether as Regulator with the Plan
9 if this is something is that he'd want to know. That
10 seems an appropriate question. Proceed.

11 MR. BRODY: Your Honor, I'll add an
12 additional objection: It calls for speculation.

13 THE COURT: Overruled. Seems precise to
14 me.

15 THE WITNESS: As I've said before, I
16 have never, other than dealt with the mortgage
17 Guaranty insurer, had occasion to deal with a
18 financial guaranty company. I recognize that they
19 present unique and different problems than
20 traditional personal commercial property casualty
21 business, and I'm not going to be able to respond to
22 questions as I've never had to deal with these sorts
23 of instruments, and so I wouldn't know how to
24 respond.

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1 BY MR. RICARDO:

2 Q That's just not your area of expertise, is it?

3 A **It is not.**

4 Q Let's turn to something different, which is
5 Paragraphs 45-C-5 of your affidavit. There you made
6 the critique that the Rehabilitator will not continue
7 to prepare statutory financial statements. My
8 question is whether you heard Mr. Peterson's
9 testimony on that front?

10 A **I did. And I didn't understand it.**

11 Q So I take it -- Well, let me ask you this: If it
12 turns out that Mr. Peterson's testimony was that the
13 Segregated Account and the General Account are going
14 to continue to prepare statutory financial
15 statements, would that satisfy your concern?

16 A **Well, what I was getting at here is properly prepare**
17 **statutory financial statements. I've looked at the**
18 **financial statements for the Segregated Account as of**
19 **March 31st and June 30th and find them deceptively**
20 **confusing and I don't think fairly set forth the**
21 **transactions that have occurred.**

22 Q But you nonetheless understand that they're going to
23 continue to be prepared in the future, right?

24 A **I hope not in that fashion.**

25 Q You would change the presentation?

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1 A Correct.
2 Q Are you trained as an auditor or an accountant?
3 A I don't know what you mean by that question.
4 Q Do you have a degree in --
5 A In accounting, yes.
6 Q You do?
7 A Yes.
8 Q Okay. Have you --
9 A That was 46 years ago, or maybe longer than that.
10 Q Have you ever worked professionally as an auditor
11 since then?
12 A When I started my career in the insurance department
13 I was an auditor. When I was at Coopers and Lybrand
14 I participated in audits, not more in a consulting to
15 the auditing capacity.
16 Q Well, which group were you in at
17 PricewaterhouseCoopers when you were there? Was
18 there a group or department that you were a part of?
19 A I was part of the insurance practice.
20 Q And is that a consultancy practice or audit practice?
21 A The practice group that I was part of was the audit
22 practice.
23 Q Let me ask you about Paragraph 48 of your affidavit.
24 The critique -- one of the critiques you made there
25 was that you considered customary for a domiciliary

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1 regulator to advise other regulators of the plans to
2 deal with a troubled insurer. Have you heard
3 testimony addressing that point?
4 A I have heard some testimony, although I don't know
5 quite what to make of it. I mean, I heard the
6 Commissioner talking to the Federal Reserve, the
7 Comptroller of the Currency, the FDIC. I don't think
8 he mentioned the White House. But I don't know in
9 what context those discussions were held, whether or
10 not they were to give and did give concurrence to
11 this plan or not or were these discussions on another
12 topic.
13 Q But you did hear the testimony about that, right?
14 A Yes. And Mr. Peterson restated it.
15 Q And you're aware that the precise content of those
16 discussions is protected by confidentiality, right?
17 MR. DEVORE: Objection. Calls for a
18 legal conclusion.
19 THE COURT: Overruled.
20 BY MR. RICARDO:
21 Q Well, you said right here in your affidavit in the
22 final sentence of Paragraph 48 that statutory
23 provisions have been enacted in the states to allow
24 for such communications to occur in a confidential
25 and protected manner. Right?

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1 A Yes. And I believe Commissioner Dilweg and Mr.
2 Peterson and perhaps both indicated that there were
3 confidentiality agreements, but I didn't think that
4 it would be a breach of those agreements just to
5 indicate in a couple of words what the subject matter
6 was.
7 Q So you know there are good reasons why personnel at
8 OCI can't go into great detail about the substance of
9 those communications, right?
10 A Yes.
11 Q Okay. Let me ask you about Paragraph 49-E of your
12 affidavit. In Paragraph 49-E you talk about the
13 credit default swap obligations that were issued by a
14 subsidiary of AAC; do you see that?
15 A Yes.
16 Q Are you giving an opinion in this matter as to
17 whether the financial guaranty policies associated
18 with those credit default swaps were real insurance?
19 A I would -- This is one area that after sitting
20 through four days of testimony I've learned a bit
21 more about that. In fact, there were financial
22 guaranty policies, actual policies issued to the
23 subsidiary that had written these credit default
24 swaps. And so, you know, my -- based upon what I had
25 read, it was unclear to me as to the nature of the

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1 obligation between AAC and the subsidiary whose name
2 slips my mind. But now I learned this week that
3 there were actual financial guaranty policies issued,
4 which then raises another question in my mind, now
5 that I know that and that, you know, when you talk or
6 look at the -- how receivers, the custom and
7 practice, how receivers would view a claim of an
8 affiliate involving insurance, they're usually not
9 treated in the same fashion as external
10 policyholders, with some exception.
11 MR. RICARDO: Can I hear what my initial
12 question was?
13 (Previous question read.)
14 MR. RICARDO: And I'll move to strike
15 the answer as not responsive to the question.
16 THE COURT: Grant that. Do you have
17 question in mind now?
18 THE WITNESS: Yes.
19 THE COURT: Go ahead, answer it.
20 BY MR. RICARDO:
21 Q And I'd ask -- it seems to me, sir it's capable of a
22 yes or no answer. Are you give an opinion or are you
23 not giving an opinion on whether the financial
24 guaranty policies issued for the benefit of the bank
25 group were real insurance policies or not real

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1 insurance policies?
2 A I am not.
3 Q You've also stated in that same paragraph that there
4 were noninsurance-related liabilities allocated to
5 the Segregated Account; do you see that part of your
6 affidavit?
7 A Yes.
8 Q Okay. Are you giving an opinion that it's improper
9 to do so or are you simply making an observation?
10 A Oh, I definitely think it's improper under my reading
11 of that Wisconsin section of the insurance law.
12 MR. RICARDO: And to the extent a legal
13 opinion is being given, I'd move to strike. But let
14 me clarify. Maybe I should clarify.
15 Q You're not testifying as a matter of law what the
16 Wisconsin Segregated Account statute permits, are
17 you?
18 A I can't give a yes or no answer to that question.
19 Q So you're reserving the right to give opinions on
20 questions of law; am I understanding you?
21 A I have spent the majority of my life reading,
22 writing, interpreting insurance law, and I feel that
23 I am capable of reading an insurance statute and
24 determining for myself what it what it says.
25 Q And you've done that in this matter in your

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1 affidavit; is that right?
2 A Yes.
3 MR. RICARDO: Well, given that Mr.
4 Schacht has admitted that he's giving opinions of
5 law, I'd renew the motion that we made earlier to
6 strike any such opinions, though obviously the Court
7 has ruled on that previously.
8 MR. BRODY: I can respond to that, if I
9 may, Your Honor. We are not offering his opinions as
10 a matter of law. As he testified in his direct
11 examination, he is offering his opinions on the
12 national consensus as to what happens and should
13 happen in insurance rehabilitations of this type.
14 And he's explained the basis for that.
15 On cross-examination they've asked a
16 number of questions that was elicited legal answers.
17 The fact that they've elicited that testimony cannot
18 be used to exclude the testimony he gave on direct,
19 which is as to the national practice.
20 And I note that this is what other
21 witnesses have done in the case. Mr. Dilweg, who
22 testified he had not read the Wisconsin Statute and
23 nonetheless testified about what he understood the
24 same terms meant. And that is all Mr. Schacht is
25 responding to, just in the same manner that the

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1 witnesses called by the OCI have done.
2 THE COURT: What you're asking the Court
3 to do then is to rule according to the custom and
4 practice established by the answers in this case?
5 MR. BRODY: I'm asking, Your Honor, to
6 interpret the reasonableness and appropriateness of
7 the OCI's exercise of discretion in light of what the
8 custom and practice on a nationwide basis, including
9 Wisconsin, is.
10 THE COURT: All right. Well, that's
11 argument. I think I ruled before on the issue of
12 opinions on the matter of the law.
13 MR. BRODY: I understand.
14 THE COURT: Let's proceed.
15 MR. RICARDO: And I'll move on to
16 something different.
17 Q I just wanted to ask you about something in Paragraph
18 40 of your affidavit. In the second sentence you
19 write, quote, once an insurer has ceased writing
20 business, the regulator's concerns is no longer with
21 the protection of the general public. Have I read
22 that correctly?
23 A Yes.
24 Q So in your opinion OCI made a mistake in taking into
25 account the protection of the interests of public

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1 generally; is that a fair characterization of your
2 opinion?
3 A Yes.
4 Q Let me ask you to turn to something that is attached
5 to your affidavit as Exhibit C. It's the Wisconsin
6 laws of 1967. And I'd like you to turn to Section
7 645.01, which I believe is which I believe is on Page
8 200.
9 A I have it.
10 Q And I'd like you to look at Section 645.01(4)
11 entitled Purpose.
12 A Yes.
13 Q Now, I'm not going to ask for a legal opinion. I'm
14 just going to ask whether the opinion you just gave
15 about how OCI erred in taking into account the
16 interests of the public generally took into account
17 this statute. Did you consider that in your
18 analysis?
19 A Yes.
20 Q But you nonetheless concluded that the interest of
21 the public generally should have been disregarded; is
22 that right?
23 A That's not what I'm saying in my affidavit.
24 Q So do you now admit that OCI should take into account
25 the interest of the public generally?

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1 A It depends upon the point in time and the
2 circumstances as to what consideration I give to
3 protecting the public.
4 Q Well, let me try to ask it as a simple yes or no
5 question. In formulating a -- Strike that.
6 In making the decision to commence this
7 rehabilitation proceeding, is it your opinion that
8 OCI should have considered, among other things, the
9 interest of the public generally?
10 A No.
11 Q Let me ask you about a different section of your
12 affidavit, Paragraph 49-F. There you speak about
13 what you characterize as, quote, an unusual bias
14 toward and favor of continuing Ambac in some form; do
15 you see that?
16 A Yes.
17 Q Are you referring there to the possibility that AAC
18 or its Everspan subsidiary might issue new policies
19 in the future?
20 A That and other things.
21 Q Are you giving an opinion on this matter as to
22 whether the issuance of new policies in the future is
23 feasible? Is that part of analysis you've done?
24 A I didn't cover that in that affidavit.
25 Q And I didn't think you did. I just wanted to make

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1 sure that separate and apart from this affidavit you
2 did not conduct some independent analysis of the
3 feasibility of Ambac issuing new policies. Is that
4 correct?
5 A That's correct.
6 Q Okay. I'd like you to assume for purposes of my
7 question that someday in the future it turns out that
8 issuing new policies through Everspan is both
9 feasible and possible; do you have that assumption in
10 your mind?
11 A Yes.
12 Q Assuming that to be the case, would there have been
13 anything wrong with OCI permitting Everspan to engage
14 in profitable business activities that increase the
15 resources available to Ambac?
16 A If that company was still under the AAC
17 organizational structure and not under a different
18 organizational structure, I agree with it.
19 Q In fact, all other things being equal it is better
20 for an insurer and runoff to start earning a profit
21 in order to have more money to pay claims; do you
22 agree with that?
23 A So long as that profit doesn't derive from greater
24 risk through the corporation and its policyholders,
25 yes.

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1 Q So you think insurance companies should restrict
2 themselves to the business of making profit without
3 risk?
4 A That would be a nice business if you could find it.
5 Q And you can only find it in Fantasy Land; is that
6 true?
7 A Well, there are other places. But --
8 Q The fact of the matter is, sir, that in order to
9 conduct a profitable insurance business, some degree
10 of risk is required; is that right?
11 A That's correct.
12 Q Let me turn to a different topic.
13 THE COURT: All right. That's a good
14 point to turn to the afternoon recess. We'll be in
15 recess for 15 minutes. You may step down, sir.
16 (End Reporter Weisling Section
17 C.)
18 (Following proceedings reported
19 by Jennifer Poirior.)
20 (On the record at 3:17 p.m.)
21 THE COURT: Again the Circuit Court for
22 Dane County is in session in the matter of the
23 Rehabilitation of the Segregated Account of Ambac
24 Assurance Corporation.
25 Mr. Ricardo, you were in cross. You may

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1 proceed.
2 MR. RICARDO: Thank you, your Honor.
3 BY MR. RICARDO:
4 Q Mr. Schacht, I understand you testified earlier that
5 you didn't provide your own Liquidation Analysis, and
6 I want to ask you some questions building on that.
7 You are not offering an opinion today
8 that Segregated Account Policyholders would receive
9 more money in a rehabilitation of Ambac as a whole
10 than they would under the proposed Plan; is that
11 right?
12 A We don't know.
13 Q But you're not offering that opinion, right?
14 A That's correct.
15 Q Similarly, you are not offering an opinion that Ambac
16 Policyholders would be better off in a liquidation of
17 Ambac than they would be under the proposed Plan,
18 correct?
19 A Again, we don't know.
20 Q And you're not offering an opinion on that, right?
21 A That's correct.
22 Q Okay. For purposes of this next question, I want you
23 to make an assumption, and the assumption I'd like
24 you to make is as follows:
25 Please assume that the Commissioner

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1 concluded that policyholders as a whole would receive
2 more money under the proposed Plan than they would
3 under a rehabilitation of Ambac as a whole or a
4 liquidation. Do you have that assumption in mind?

5 A Yes.

6 Q Making that assumption, is it your testimony that OCI
7 should have proceeded with a full rehabilitation or a
8 liquidation instead of pursuing the proposed Plan?

9 MR. DEVORE: Objection. I'm going to
10 object to the relevance of the Commissioner's thought
11 process in determining a constitutional issue.

12 THE COURT: Regarding a?

13 MR. DEVORE: A constitutional issue.

14 There's no deference to the Commissioner in
15 determining what is constitutional.

16 THE COURT: How is there a
17 constitutional basis in that?

18 MR. DEVORE: The Carpenter case is based
19 on constitutional issues.

20 THE COURT: Did you mention the
21 Carpenter case in that?

22 MR. DEVORE: His whole question is based
23 on that assumption. I just want to state my
24 objection for the record.

25 THE COURT: Did you base -- I didn't get

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1 that, but counsel may be more alert at this time of
2 the day and week than I am.

3 MR. RICARDO: I didn't say anything
4 about the Carpenter case in my question, your Honor.
5 I was -- Obviously, there's an assumption built into
6 the question which I've stated, and I'm simply asking
7 Mr. Schacht, you know, based on the opinions he's
8 given, what he says the Commissioner should have
9 done.

10 THE COURT: The objection will be
11 overruled. I don't think that has application here.

12 MR. RICARDO: Since I'm afraid I might
13 not be able to ask it again, could you read the
14 question back?

15 (Last question read back by
16 reporter.)

17 THE WITNESS: I'm basing my answer
18 solely on the assumption that you gave me, that the
19 Commissioner concluded that the Plan would offer more
20 benefits to all policyholders, a conclusion that I
21 don't agree with, but you said I should make that
22 assumption. Then I agree that, you know, the
23 Commissioner should pursue the Plan.

24 BY MR. RICARDO:

25 Q Okay. Let me ask you a similar question. For

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1 purposes of this question, I'm also asking you to
2 assume that the Commissioner concluded that placing
3 only a subset of Ambac's policies into rehabilitation
4 would give policyholders as a whole more money than
5 placing all of Ambac's policies into rehabilitation.
6 Do you have that assumption in mind?

7 A Yes.

8 Q Making that assumption, is it your opinion that OCI
9 should have proceeded with a rehabilitation of all of
10 Ambac's policies instead of with the proposed Plan?

11 A Yes.

12 MR. RICARDO: I have no further
13 questions.

14 THE COURT: Mr. Van Sicklen, remembering
15 now that you are bound by questions asked and answers
16 given up to this point?

17 MR. VAN SICKLEN: I also remember it's
18 late on Friday of a long week, so I'll be very brief.
19 I'll resist the temptation of taking much time.

20 **CROSS-EXAMINATION:**

21 BY MR. VAN SICKLEN:

22 Q I just really want to qualify one point, Mr. Schacht.
23 There was some testimony about Illinois having a
24 Separate Account Statute. Do you recall that?

25 A Yes.

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1 Q Okay. And I just called up on my BlackBerry what is
2 titled as Illinois Consolidated Statute 215 5/245.21,
3 and it's titled Establishment of Separate Accounts by
4 Domestic Companies Organized to do Life, Annuity, or
5 Accident and Health Insurance Business. Is that the
6 statute you were thinking of?

7 A Yes.

8 Q And it's true that that statute does not apply to
9 financial guaranty insurance?

10 A That's correct.

11 Q Okay. And it's also true, is it not, Mr. Schacht,
12 that Illinois does not have a statutory provision for
13 an insurer's regulator, like OCI here, on an optional
14 basis putting the Separate Account or here a
15 Segregated Account for a financial guaranty insurer
16 into rehabilitation?

17 MR. BRODY: Objection; asked and
18 answered.

19 MR. VAN SICKLEN: No. They're two
20 different statutes, your Honor.

21 THE COURT: Overruled.

22 A No other state that I'm aware of has a statute
23 similar to what Wisconsin has that's labeled
24 Segregated Account.

25 Q Okay. You took my last question.

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1 MR. VAN SICKLEN: So that's all I have,
 2 your Honor.
 3 THE COURT: All right. That's all on
 4 the direct. Recross?
 5 MR. BRODY: Redirect, your Honor.
 6 THE COURT: Excuse me. Redirect. I'm
 7 sorry.
 8 MR. BRODY: I have a little, Judge.
 9 THE COURT: No recross. You're going to
 10 remind me of my ruling on that, aren't you?
 11 MR. BRODY: I will if I have to.
 12 THE COURT: All right. Redirect.
 13 **REDIRECT EXAMINATION:**
 14 BY MR. BRODY:
 15 Q I'm going to ask you about two exhibits, sir, so I'm
 16 going to ask you to pull them out so we can avoid the
 17 shuffling of papers. Do you have Exhibit 66, which
 18 is the affidavit?
 19 A I do.
 20 Q And then Exhibit 67, which is a LexisNexis printout
 21 of a January 1, 2007 article?
 22 A I have that also.
 23 Q Okay. Let's get rid of that one first, the Exhibit
 24 67. If you turn to the second page, Mr. Ricardo
 25 asked you some questions about the portion you wrote

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1 about Wisconsin having -- excuse me -- being a little
 2 different than other states and it had substantive
 3 and other differences. Can you, looking at the next
 4 couple of paragraphs, describe what you were talking
 5 about?
 6 A Yes. What I was talking about was there is a unique
 7 part of the Wisconsin Statutes that Spencer Kimball
 8 wrote, and that is the section that provides for a
 9 federal receivership. I've read all of this material
 10 in the proceedings of the NAIC, and it's interesting
 11 that the controversy -- That section did not find its
 12 way into the NAIC model not because on what I thought
 13 were meritorious grounds, but, rather, they didn't
 14 want to create any suggestion that any aspect of the
 15 insurance regulation should be taken over by the
 16 feds, even federal courts.
 17 Q You were asked some questions by Mr. Ricardo, at
 18 least, about the differences between financial
 19 guaranty and other types of insurance. Do the
 20 principles that you talked about in your direct
 21 examination and that you mentioned in Exhibit 66
 22 apply with equal force to all types of policies?
 23 A Yes.
 24 Q Is there any difference based on the kind of policy?
 25 A No.

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1 Q I think I misspoke about the exhibits I wanted you to
 2 look at. Do you also have the White Paper in front
 3 of you? Yes, it is part of Exhibit 66. Thank you,
 4 David. Tab D, Exhibit 66.
 5 A Yes.
 6 Q You were asked some questions about the alternative
 7 mechanisms principles. Do you remember those
 8 questions?
 9 A Yes.
 10 Q Is there anything in the White Paper or the
 11 alternative mechanisms that were discussed there that
 12 would justify what OCI is attempting to do here?
 13 A No.
 14 Q Why is that?
 15 A Well, as I said, these principles apply to all types
 16 of companies, all situations. They discuss the very
 17 principles and concepts and standards that have been
 18 applied across the country uniformly with respect to
 19 dealing with troubled and failing companies that
 20 eventually wind up in some sort of receivership
 21 proceedings.
 22 Q Do any of the alternative mechanisms talk about
 23 treating policyholders of the same company
 24 differently?
 25 A No. In fact, it says the opposite, that all

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1 policyholders, presumably in the policyholder class,
 2 are to be treated fairly and equally and equitably.
 3 Q You were asked some questions about Triad and the
 4 presence or absence of a Liquidation Analysis in
 5 Triad. I'd like to return to that topic.
 6 A Yes.
 7 Q Was a Liquidation Analysis prepared in Triad and
 8 provided to the regulators?
 9 A Yes.
 10 Q Was one necessary in your opinion?
 11 A No.
 12 Q Why not?
 13 A Well, because all of the assets that Triad possessed,
 14 the insurer, were being utilized to satisfy all
 15 policyholder obligations.
 16 Q Were any policyholders being treated in a different
 17 way than any other policyholders?
 18 A No. In fact, short-tail, long-tail claimants were
 19 being treated exactly in the same fashion.
 20 Q Mr. Ricardo also asked you some questions about the
 21 Mutual Benefit Life. I believe it was a
 22 rehabilitation?
 23 A Yes.
 24 Q Were you personally involved in that?
 25 A No.

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1 Q Now, you were asked some questions that suggested one
2 group got a hundred percent and one group got
3 88 percent. Can you explain what happened?
4 A **My recollection --**
5 MR. VAN SICKLEN: Wait. Wait. I object
6 on foundation. He just established that this
7 gentleman wasn't involved, and now he's asking
8 questions right afterwards.
9 MR. BRODY: If --
10 THE COURT: I would agree with that.
11 What -- Well, lay a foundation or you won't be
12 allowed to pursue that.
13 MR. BRODY: Okay. If counsel would
14 prefer that we strike all of the discussion of this
15 entire insurance company on that ground, I'd be happy
16 to do it. But I can lay the foundation.
17 BY MR. BRODY:
18 Q What's your knowledge about what happened in that
19 rehabilitation? What's your basis of your knowledge
20 of what happened in that rehabilitation?
21 A **Well, I have an interest in following receiverships**
22 **that happen around the country and how they're dealt**
23 **with and various plans, and Mutual Benefit Life was**
24 **one of those that I remember following. I don't**
25 **remember a lot of details about it, but I remember**

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1 **some. And so that's a basis of my knowledge.**
2 Q And was that the basis on which you testified in
3 response to Mr. Ricardo?
4 A **Yes.**
5 Q Okay. Well, using that same basis, can you explain
6 the difference between the 88 percent holders and the
7 hundred percent holders?
8 A **Yes. And this is based upon, probably, faulty**
9 **recollection, but I believe --**
10 MR. VAN SICKLEN: I object.
11 THE COURT: Sustained. Maybe that's a
12 new standard of expert testimony, faulty
13 recollection.
14 BY MR. BRODY:
15 Q Let me ask one more question and then maybe we can
16 put an end to this insurance company, the Mutual one.
17 Was your testimony in response to Mr. Ricardo based
18 on the same faulty recollection?
19 MR. VAN SICKLEN: I object to the form
20 of the question. He answered before. Now counsel
21 wants to --
22 THE COURT: I'll sustain that. Let's
23 move on, counsel.
24 MR. BRODY: Fair enough.
25

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1 BY MR. BRODY:
2 Q You were asked some questions, and I can refer you to
3 the section in your report if that would make it
4 easier for you, but I'm not sure that's necessary.
5 You were asked some questions about your criticism of
6 the control that OCI would have over the Ambac
7 employees. Do you remember that issue?
8 A **Yes.**
9 Q And I believe you said you were shocked by some
10 testimony of Mr. Peterson?
11 A **And others.**
12 Q What shocked you?
13 A **Well, there was some -- I forget the lady's name that**
14 **was the representative of Ambac.**
15 Q Ms. Matanle?
16 A **Yes. That's it. Sorry. Who testified yesterday,**
17 **continued this morning, said that there was a weekly**
18 **one-hour meeting with some people from OCI to go over**
19 **things. And, you know, I just can't fathom how, with**
20 **all of the things going on, that they -- that OCI**
21 **could exercise proper control in a one-hour meeting**
22 **once a week.**
23 Q When you refer to the control that OCI would need to
24 have over the people at the company involved in the
25 claims process, what did you have in mind? What do

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1 you think proper control is?
2 A **Well, it's obvious that the two people here from**
3 **Ambac -- and again, even though you just gave me the**
4 **ladies's name, I don't recall it, and I can't recall**
5 **the gentleman's name. But they're obviously very**
6 **experienced, talented people, the sort of people you**
7 **need to do a rehabilitation or, in fact, a**
8 **liquidation would be, whatever it is, all included in**
9 **those proceedings. But you would want to have**
10 **control over their compensation and benefits, which**
11 **they don't have as being only through this**
12 **contractual arrangement.**
13 Q You were asked some other questions also by
14 Mr. Ricardo about consideration of the public
15 interest, and I believe you were of the opinion that
16 at a certain point, the public interest didn't matter
17 or mattered less. Can you explain what you meant?
18 A **Yes. Once you get the order, the receivership order,**
19 **be it rehabilitation, liquidation, the Director --**
20 **and I think Mr. Peterson mentioned this -- puts on a**
21 **completely different hat, a hat that's of a receiver**
22 **of a fiduciary, who only has responsibility towards**
23 **policyholders that are in that entity that he is now**
24 **taking control of. That's why I couldn't understand,**
25 **they have had this receivership order for some time**

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1 **now, so their entire focus should be on getting as**
2 **much to policyholders as quickly as possible -- and**
3 **that's all policyholders -- and there is no concern**
4 **about the public any longer.**
5 MR. BRODY: If I may have a moment, your
6 Honor?
7 (Counsel confer.)
8 I have no further questions. Thank you,
9 your Honor.
10 THE COURT: All right. I'm assuming the
11 rule will apply, but there were several of you that
12 jumped up to ask questions who were among the
13 Objectors, and I'm trying to avoid looking at
14 Mr. Devore.
15 MR. DEVORE: I appreciate that.
16 THE COURT: All right. I'm going to
17 assume that's it. I won't allow recross on this.
18 You may step down.
19 Excuse me. Did anybody on the phone
20 want to have a chance at questioning here?
21 MR. ROSS HOOPER: No. Thank you, your
22 Honor.
23 THE COURT: You may step down.
24 I believe those were -- Or this is the
25 witness that the Objectors had indicated they would

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1 call. Does that complete the Objectors' case then on
2 this?
3 MR. BRODY: Correct, your Honor. We
4 don't intend to call any other witnesses.
5 Just as a clarification matter, we, in
6 keeping with the practice your Honor has followed and
7 Mr. Van Sicklen's suggestion, we would ask you to
8 receive Exhibit 66 if you haven't already done so,
9 the exhibit that was used with Mr. Schacht.
10 THE COURT: There was 66, 67, 68, 69,
11 70, and 71 that were marked. I think everything up
12 to 65 has been received.
13 MR. BRODY: Well, your Honor, reserving
14 our position from the prior objections, in light of
15 what your Honor's ruled, that's correct.
16 THE COURT: All right. And is the
17 motion to receive 66 through 71?
18 MR. RICARDO: Yes.
19 MR. VAN SICKLEN: Just goes to weight,
20 your Honor. We'll just reserve those issues as to
21 his affidavit.
22 THE COURT: All right. 66, 67, 68, 69,
23 70, and 71 are received.
24 (Exhibits 66, 67, 68, 69, 70,
25 and 71 received into evidence.)

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1 Are they on the witness stand? Would
2 you bring those to the clerk so she can make sure
3 she's got them?
4 (Witness complies.)
5 Now, you had -- for those that have been
6 received, you put two boxes up here. You've been
7 using documents to the left of the witness stand.
8 Which ones were to come in as part of that -- the
9 Court's acceptance?
10 MR. GREENWALD: Your Honor, the ones on
11 the left closest to the witness are the ones with the
12 original sticker tabs, and those are the ones I would
13 propose that we use for the record.
14 THE COURT: All right. And those then
15 will take -- the clerk will take possession of. The
16 ones that are behind the clerk were complimentary to
17 the -- for the Court's use, which I like not to do,
18 and you can mark that down as one of my brighter
19 decisions during this proceeding; I'd rather listen
20 to the witnesses. Do you want those back?
21 MR. GREENWALD: We will recycle them if
22 your Honor doesn't want to use them. That's up to
23 you, your Honor.
24 THE COURT: They have good binders in
25 there?

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1 MR. GREENWALD: They have great binders.
2 They're all yours. They're all yours.
3 MR. VAN SICKLEN: Your Honor, the only
4 thing I'd note is when we give the clerk the
5 original-stickered ones, we should remove Exhibits
6 38, 39 that were not moved and not admitted, I think.
7 MR. GREENWALD: With regard to 38, just
8 for clarification, your Honor, I would ask the Court
9 to allow 38 to go into the record for the record's
10 completeness. We did refer to language out of it. I
11 didn't move it into evidence, but I think based on
12 what we've been doing here, that for the record to be
13 complete for the Court to be able to at least refer
14 to it in looking at the transcript, that would be
15 useful to the -- to any other Court that may look at
16 it or this Court for its opinion.
17 THE COURT: It may be important on
18 appeal. It hasn't been received, but it is offered
19 into the record, not as received evidence. Any
20 objection?
21 MR. VAN SICKLEN: Not with that comment,
22 your Honor.
23 MR. GREENWALD: And 39, I'm not sure
24 what it is. Mike, what is that?
25 MR. VAN SICKLEN: I think it's some

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1 bankruptcy court first-day orders and motions for
2 compensation.

3 MR. GREENWALD: I guess I'd offer that
4 for the same -- It's all part of the notebooks. We
5 did not offer it into evidence, and I would just say
6 that we take it with the record.

7 MR. RICARDO: I don't recall that
8 exhibit ever being referred to.

9 MR. VAN SICKLEN: It was not.

10 MR. GREENWALD: And I defer to the
11 Court's, you know --

12 THE COURT: Could we have your capable
13 associate remove 39 then?

14 MR. GREENWALD: Our capable associate,
15 Ms. Hupila, will do just that, your Honor. Thank
16 you. And I'd like to thank her for all the work that
17 she's been doing to help everyone here in court
18 today.

19 THE COURT: She is amazingly efficient
20 in controlling and producing and finding those
21 exhibits. I think that was a relief for the
22 witnesses who looked at those binders and were afraid
23 they had to go over and sort out what you're talking
24 about.

25 So if you would remove that 39, then

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1 that set of exhibits should be complete subject to
2 the rulings and what we've been discussing. And the
3 others are on the stand.

4 Did you get all that, Loretta, for your
5 minutes?

6 THE CLERK: Yes.

7 THE COURT: All right. You had
8 mentioned calling rebuttal. Are you going to call
9 rebuttal?

10 MR. VAN SICKLEN: I hate to break your
11 heart, your Honor, but no, I'm not. And I would
12 assume that would be the close of the evidentiary
13 portion of the hearing.

14 THE COURT: All right. I'm looking to
15 see if there's any other response. All right.
16 Seeing none, the next procedure then is that on
17 the -- Was it the 29th and 30th we have set for
18 argument? You have done such a thorough job in your
19 filings on this and your briefing. I imagine there
20 may be some other issues to argue. Were you looking
21 at a time for filing and exchanging your arguments on
22 this?

23 MR. GREENWALD: We had not spoken about
24 that, and given that next week is Thanksgiving, I
25 suspect that it would be much appreciated if we

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1 didn't have to do that.

2 THE COURT: I remember my days in
3 private practice, and we always worked on holidays.

4 MR. GREENWALD: Yes, exactly. And my
5 wife reminds me that I do it as well, and she would
6 prefer at least once that I didn't.

7 THE COURT: Well, one thing I would like
8 to have addressed is the issue of your proposal for
9 the findings of fact and conclusions of law you're
10 asking the Court to draw from this evidence and from
11 the arguments and your legal positions.

12 MR. GREENWALD: We can do that.

13 THE COURT: I think the Commissioner has
14 filed one. And so I would assume everybody wants
15 that opportunity, if they wish, to file --

16 MR. GREENWALD: Yes.

17 THE COURT: -- on their position,
18 because you did have different positions, proposed
19 findings of fact and conclusions of law to be
20 considered.

21 MR. GREENWALD: And if I have to work on
22 Thanksgiving, I will do so, your Honor. I think that
23 that's appropriate. That's fine.

24 THE COURT: You don't have associates?

25 MR. GREENWALD: Perhaps when I said I, I

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1 meant it in the collective sense.

2 Your Honor, would you -- would it be --
3 And I throw this out there as a possibility. Would
4 it assist your Honor to have those before argument,
5 or would you just as soon have them shortly after
6 argument?

7 THE COURT: Well, it would help me to
8 have them before. I've seen Mr. Van Sicklen's and
9 his brief, so he's got one up on you on that. So I
10 would leave that to you. The more information you
11 can get me that I could have while I'm on my deer
12 stand to read, I would appreciate.

13 MR. GREENWALD: All right. Your Honor,
14 we will endeavor to do so next week.

15 THE COURT: So it's up to you. Your
16 call.

17 MR. VAN SICKLEN: And just one idea --
18 we haven't discussed it amongst yourselves -- is
19 you've heard so much, there's been so much written
20 argument. A lot of these issues have been briefed
21 and so forth in the past. I'm not sure we really
22 need two days of oral argument. So one possibility
23 would be to have the proposed forms of orders or
24 findings -- I think, based upon the evidence, we
25 would propose to supplement what we previously filed.

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1 But maybe have those due, you know, by noon on Monday
2 or something, and have the arguments take place on
3 Tuesday morning. And I realize that there's a number
4 of Objectors, but if we had some reasonable
5 constraints about the length of it that the Court
6 would find helpful, I would assume we could get done
7 in one day.

8 THE COURT: You are all such competent
9 and skilled attorneys. I would think that you're
10 fully capable of making your arguments written, but
11 you certainly have the right to make oral arguments
12 if you wish.

13 MR. GREENWALD: Speaking on behalf of my
14 client, we think that putting proposed findings in
15 front of the Court on Monday and then having oral
16 argument on Tuesday, if we had a full day for
17 argument, that that would probably be sufficient.
18 Now, of course, I'm only one of many here, but I
19 would promise to be succinct and direct. I don't
20 know whether one day is enough for everyone and how
21 many people intend to appear.

22 THE COURT: Well, let's hear from the
23 others on this proposal. Those who would intend to
24 make final arguments, I would assume they'll be the
25 ones who have been -- Oh, it was just pointed out to

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1 me the courthouse is closed next Friday because it's
2 an employee-negotiated holiday, if you're FedExing or
3 whatever.

4 MR. OWEN: We're fine with that, your
5 Honor, on behalf of Lloyds and Depfa.

6 MR. WELSH: Depfa's fine as well. So do
7 I understand that any proposed findings of fact and
8 conclusions of law would be filed Monday the 29th by
9 noon?

10 THE COURT: Right.

11 MR. WELSH: Depfa's fine with that, your
12 Honor.

13 THE COURT: And you think we can get the
14 argument done then on Tuesday?

15 MR. OWEN: Yes.

16 MR. WELSH: Brevity is the soul of wit.

17 MR. VAN SICKLEN: Despite this week.

18 THE COURT: Just a moment. Did you have
19 Mr. Bentley in on that?

20 MR. GREENWALD: Mr. Bentley has left the
21 building, I'm afraid.

22 THE COURT: He has. All right.

23 MR. WHITMER: He apologized. He had to
24 catch his flight, but on behalf of Wells Fargo, we're
25 also agreeable to the Plan proposed by Mr. Greenwald.

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1 MR. DEVORE: That's fine with One State
2 Street.

3 MR. JOHNSON: That's fine with Bank of
4 America, Wells Fargo, and Wilmington Trust as
5 Trustees.

6 MR. VAN SICKLEN: It might actually help
7 on flights for people too. It's very tough to get a
8 ticket.

9 THE COURT: All right. Then the
10 procedure we will follow is as you have agreed.
11 You'll file your proposed findings of fact,
12 conclusions of law, and briefs that you wish to by --
13 and exchange, I assume you do that electronically.
14 Basically, file it here with the court by noon on
15 Monday, and then Tuesday we will have argument
16 starting -- 9:00 should work because you've got to do
17 some traveling.

18 All right. Anything further by way of
19 scheduling on this?

20 MR. VAN SICKLEN: No. Thank you and
21 your staff for their courtesy this week.

22 THE COURT: Mr. Ricardo?

23 MR. RICARDO: No, nothing further from
24 us, your Honor.

25 THE COURT: Mr. Greenwald?

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1 MR. GREENWALD: Everything's fine.
2 Thank you very much, your Honor.

3 MR. WHITMER: Your Honor, just one point
4 of clarification. I think the Court just said for
5 filing here by noon. Is the Court specifying to this
6 courthouse or Dane County?

7 THE COURT: Here. Your filing would be
8 in Dane County. That's where documents go, but then
9 again, under the records retention, they don't have
10 to retain these types of documents. So be sure I get
11 them because I want to get a chance to get read
12 through your material before the arguments. So make
13 sure I get copies here. You can file there if you
14 wish.

15 All right. Nothing else? All right.
16 We'll be in recess.

17 WHICH ADJOURNED THE RECORD AT 3:48 P.M.

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1 STATE OF WISCONSIN)
2) SS
3 COUNTY OF DANE)
4
5 We, JENNIFER L. POIRIOR and ELLEN W.
6 WEISLING, Official Court Reporters for Dane County
7 Circuit Court, do hereby certify that we took in
8 shorthand the above-entitled proceedings held on the
9 19th day of November, 2010; we reduced the same to a
10 written transcript and that it is a true and correct
11 transcript of my notes and the whole thereof.
12 Dated at Madison, Wisconsin this 19th day
13 of November, 2010.
14
15 _____
16 Ellen w. Weisling, RMR
17 Official Court Reporter
18
19 _____
20 Jennifer L. Poirior, RMR, CRR
21 Official Court Reporter
22
23 The foregoing certification of this transcript does
24 not apply to any reproduction of the same by any
25 means unless under the direct control and/or
direction of the certifying reporter.