

In the Matter of the Rehabilitation of:

Segregated Account of
Ambac Assurance Corporation

Case No. 10 CV 1576

**RMBS POLICYHOLDERS' NOTICE OF MOTION AND
MOTION TO CLARIFY ORDER FOR TEMPORARY INJUNCTIVE RELIEF**

CIRCUIT COURT
19 AUG 30 PM 3:42
DANE COUNTY, WI

PLEASE TAKE NOTICE that Aurelius Capital Management, LP, Fir Tree, Inc., King Street Capital, L.P., King Street Capital Master Fund, Ltd., Monarch Alternative Capital LP, and Stonehill Capital Management LLC (collectively, the "RMBS Policyholders"), in their capacity as owners or managers of funds that own residential mortgage-backed securities and other indebtedness insured by Ambac Assurance Corporation ("AAC"), by their attorneys, hereby move the Court to enter an Order, substantially in the form of the proposed order attached hereto, clarifying that the Court's Order for Temporary Injunctive Relief does not enjoin the filing and prosecution of a fraudulent transfer complaint against Ambac Financial Group, Inc. ("AFG") and unknown preferred shareholders of Ambac Assurance Corporation (the "Unknown Preferred Shareholders"), substantially in the form and substance as the complaint attached hereto as Appendix 1 (the "Fraudulent Transfer Complaint"), and in support thereof state as follows:

1. AAC is a Wisconsin-domiciled insurer that provides financial guaranty insurance for such products as residential mortgage-backed securities ("RMBS"). Its financial condition deteriorated significantly over the past three years, and its Board of Directors voted to approve the establishment of a Segregated Account on or about March 24, 2010. Certain insurance

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policies, including those covering the RMBS held by the RMBS Policyholders, were subsequently transferred from AAC's General Account to the Segregated Account.

2. On March 24, 2010, the Commissioner of Insurance of the State of Wisconsin (the "Commissioner") petitioned the Court to place the Segregated Account into rehabilitation. The Court granted his request that same day. While the RMBS Policyholders and others have raised various challenges in this Court and in the Wisconsin Court of Appeals to the creation of the Segregated Account, the process to which interested parties are entitled in the rehabilitation proceedings, and the allocation of various policies to the Segregated Account, these challenges are not at issue in the RMBS Policyholders' proposed Fraudulent Transfer Complaint or this Motion.

3. The Court also held a hearing on March 24 regarding the Commissioner's *ex parte* motion for immediate injunctive relief to block certain suits and actions related to the Segregated Account during the pendency of the rehabilitation. After the hearing, the Court granted the Commissioner's motion and entered an Order for Temporary Injunctive Relief (the "Injunction Order"). In its Injunction Order, the Court found "that the requested injunctive relief is authorized by Chapter 645 of the Wisconsin Statutes and that the Court has exclusive jurisdiction over matters relating to this rehabilitation proceeding." Injunction Order, at 1. The Court also stated that the relief specified in the 16-page Injunction Order "is complex" and encouraged parties who may be affected by it to review the entire order. Injunction Order, at 2.

4. The RMBS Policyholders have carefully reviewed the Injunction Order, which prohibits suits against the Segregated Account, the Commissioner, AAC or its General Account in respect of the Segregated Account or its policies, contracts or liabilities allocated to the Segregated Account, or any subsidiary of AAC whose stock or other ownership interests were

allocated to the Segregated Account. Injunction Order, at 2. Nowhere, however, does the Injunction Order prohibit the commencement or prosecution of any actions, claims, lawsuits, or other formal legal proceedings against AAC's parent, AFG, or the Unknown Preferred Shareholders which are not parties to the above-captioned proceedings.

5. Moreover, the Injunction Order does not address, let alone prohibit, the claims set forth in the Fraudulent Transfer Complaint. Nevertheless, the RMBS Policyholders are conscious of the complexity of the Injunction Order and aware that paragraph 10 subjects anyone who violates it to civil and criminal penalties, including partial or full disallowance of claims for any willful violations.¹ The RMBS Policyholders therefore file this motion out of an abundance of caution to clarify this Court's Injunction Order and the RMBS Policyholders' understanding that the filing and prosecution of the Fraudulent Transfer Complaint would not violate it.

6. As described in greater detail in the Fraudulent Transfer Complaint, the RMBS Policyholders plan to file the attached Fraudulent Transfer Complaint to prevent AFG from depleting AAC's assets by: (1) enjoining AFG from receiving any dividends or other transfers while policyholders and creditors hold claims that have not been paid in full; (2) enjoining AFG from taking steps to use AAC's net operating losses ("NOLs") to offset any of AFG's income without directly and immediately compensating AAC for such NOLs; (3) enjoining AFG from utilizing intercompany accounts with AAC and its subsidiaries to finance AFG's operations or

¹ Paragraph 10 of the Injunction Order states: "Any person or entity violating the terms of this Order may be subject to the sanctions contained in Wis. Stat. § 601.64, including civil forfeiture and criminal penalties. Wis. Stat. § 645.07(4). Willful violation of this Order may also constitute good cause for the Commissioner to void or limit any policy or other contract obligations otherwise owed by the Segregated Account or an Allocated Subsidiary to the party violating this Order, including partial or full disallowance of claims." The Commissioner has suggested that the Court exercise its authority under this paragraph to hold in contempt one party that the Commissioner claims violated the terms of the Injunction. See Rehabilitator's Consolidated Brief in Opposition to All Motions Scheduled for Hearing on September 9, 2010, dated August 17, 2010, at 42 n.48.

for any other purpose; (4) enjoining AFG from permitting any affiliates other than AAC and AAC's subsidiaries to take any action that AFG is prohibited from doing by the terms of the injunctive relief sought in the Fraudulent Transfer Complaint; and (5) declaring certain fraudulent conveyances null and void and setting them aside pursuant to N.Y. DEBT. & CRED. LAW § 279(c).

7. The RMBS Policyholders reserve their right to file a brief in reply to any brief filed in opposition to this motion.

WHEREFORE, for the reasons stated herein, the RMBS Policyholders respectfully request that the Court grant their Motion to Clarify Order for Temporary Injunctive Relief, and such other and further relief as is just and proper.

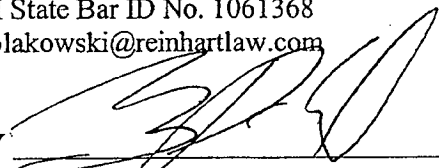
Dated this 30th of August, 2010.

Reinhart Boerner Van Deuren s.c.
22 East Mifflin Street, Suite 600
Madison, WI 53703
Telephone: (608) 229-2200
Facsimile: (608) 229-2100

R. Timothy Muth
WI State Bar ID No. 1010710
tmuth@reinhartlaw.com
Bryan K. Nowicki
WI State Bar ID No. 1029857
bnowicki@reinhartlaw.com
Jessica Hutson Polakowski
WI State Bar ID No. 1061368
jpolakowski@reinhartlaw.com

Mailing Address:
P.O. Box 2018
Madison, WI 53701-2018

BY


Attorneys for Aurelius Capital
Management, LP, Fir Tree, Inc.,
King Street Capital, L.P.,
King Street Capital Master Fund, Ltd.,
Monarch Alternative Capital LP, and
Stonehill Capital Management LLC

Of Counsel:

David M. Greenwald

John B. Simon

Jenner & Block LLP

353 N. Clark Street

Chicago, Illinois 60654

Telephone: (312) 222-9350

Facsimile: (312) 840-7774

dgreenwald@jenner.com

jsimon@jenner.com

Patrick J. Trostle

Jenner & Block LLP

919 Third Avenue, 37th Floor

New York, New York 10022

Telephone: (212) 891-1665

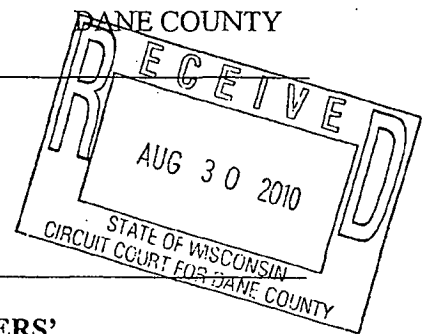
Facsimile: (212) 909-0835

ptrostle@jenner.com

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STATE OF WISCONSIN

CIRCUIT COURT



In the Matter of the Rehabilitation of:

Segregated Account of
Ambac Assurance Corporation

Case No. 10 CV 1576

**ORDER GRANTING RMBS POLICYHOLDERS'
MOTION TO CLARIFY ORDER FOR TEMPORARY INJUNCTIVE RELIEF**

This matter came before the Court on the motion (the "Motion") of Aurelius Capital Management, LP, Fir Tree, Inc., King Street Capital, L.P., King Street Capital Master Fund, Ltd., Monarch Alternative Capital LP, and Stonehill Capital Management LLC (collectively, the "RMBS Policyholders"), in their capacity as owners of or managers of funds that own residential mortgage-backed securities and other indebtedness insured by Ambac Assurance Corporation, requesting the Court enter an Order clarifying that this Court's Order for Temporary Injunctive Relief (the "Injunction Order") does not enjoin the filing and prosecution of a fraudulent transfer complaint against Ambac Financial Group, Inc. ("AFG") and unknown preferred shareholders of Ambac Assurance Corporation (the "Unknown Preferred Shareholders"), substantially in the form and substance as the complaint attached to the Motion as Appendix 1 (the "Fraudulent Transfer Complaint"). Based upon the briefing of the parties, other materials and affidavits on file, oral argument presented, and for other good cause, IT IS HEREBY ORDERED THAT:

1. The Motion is granted.

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2. The Injunction Order does not enjoin the filing and prosecution of a fraudulent transfer complaint against AFG and the Unknown Preferred Shareholders substantially in the form and substance as the Fraudulent Transfer Complaint.

Dated: _____

BY THE COURT

Honorable William D. Johnston
Lafayette County Circuit Court Judge
Presiding by Judicial Appointment

Appendix 1

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK**

Aurelius Capital Management, LP, Fir Tree, Inc.,
King Street Capital, L.P., King Street Capital Master
Fund, Ltd., Monarch Alternative Capital LP, and
Stonehill Capital Management LLC,

Plaintiffs,

-against-

Ambac Financial Group, Inc., and Unknown
Preferred Shareholders of Ambac Assurance
Corporation,

Defendants.

Case No. _____

COMPLAINT

(Jury Trial Demanded)

Plaintiffs Aurelius Capital Management, LP, Fir Tree, Inc., King Street Capital, L.P., King Street Capital Master Fund, Ltd., Monarch Alternative Capital LP, and Stonehill Capital Management LLC (collectively, the "Policyholders"), in their capacity as owners of or managers of funds that own residential mortgage-backed securities and other indebtedness insured by Ambac Assurance Corporation ("AAC"), by their attorneys Jenner & Block LLP, for their Complaint against defendants Ambac Financial Group, Inc. ("AFG") and the Unknown Preferred Shareholders of Ambac Assurance Corporation ("Unknown Preferred Shareholders") allege, upon knowledge with respect to themselves and their own acts, and information and belief with respect to all other matters, as follows:

NATURE OF THIS ACTION

1. The Policyholders file this action to prevent AFG, the parent corporation of AAC, from taking any actions to remove assets from AAC without fair consideration at a time when AAC is failing to pay its policyholders' claims as they come due

and AFG has publicly declared that it is likely to file its own bankruptcy proceedings under the United States Bankruptcy Code in the near future.

2. AFG is a holding company that provides financial guarantees and services through its subsidiaries to clients in the public and private sectors around the world. Its principal operating subsidiary is AAC, which offered financial guaranty insurance on investment grade municipal finance and structured-finance debt obligations, such as municipal bonds and residential mortgage-backed securities. AAC is subject to regulation by the Wisconsin Office of the Commissioner of Insurance (“OCI”). AFG also has affiliates other than AAC and AAC’s subsidiaries (the “AFG Affiliates”).

3. In 2008, AAC’s financial condition began to deteriorate precipitously as AAC’s claims payments and projected loss impairments mounted and its liquid claims-paying resources were eroded. In fact, in 2008, AAC ceased writing new policies and began a functional run-off of its business because of its deteriorating financial condition and lowered credit ratings. These events had a significant, direct, and negative impact on AFG’s financial condition because AFG’s liquidity and solvency are dependent on dividends from AAC. (AFG Form 10-Q (filed August 9, 2010), at 7.)

4. In light of AAC’s financial condition, in March 2010, OCI directed AAC to transfer the insurance policies as to which it had the greatest claims exposure into a newly formed segregated account within AAC (the “Segregated Account”). AAC approved this transaction on March 24, 2010, noting that to do so was in the best interests of the corporation given its deteriorating financial position. (AAC March 24, 2010 Board Resolution, at 1.) AAC stopped paying claims on policies that it transferred to the Segregated Account.

5. Despite its dire financial condition, AAC has nevertheless insisted on preserving its ability to make dividend payments and to otherwise transfer substantial value to AFG for no consideration. For example, under the terms of a June 2010 settlement of certain policies (the "June Settlement"), AAC can transfer to AFG up to approximately \$59.5 million per year to cover AFG's own operating and debt service expenses. Similarly, because of a June 2010 amendment to a tax sharing agreement between AFG and AAC, AFG is permitted to utilize AAC's valuable net operating loss tax carryforward to offset certain forms of income without compensating AAC for such use. The amount of AFG's use of AAC's net operating losses could easily be more than \$1 billion. These transfers should not be permitted. Absolutely no value should be transferred from AAC to its parent AFG while policyholders and creditors of AAC have claims that have not been paid in full.

6. The Policyholders, who are owners of or managers of funds that own securities and other indebtedness insured by AAC, have attempted to obtain a commitment from AAC and AFG that no value, which would otherwise be a fraudulent transfer, will be transferred to AAC's parent without fair consideration. AAC and AFG have refused to make such a commitment, though their decision-making on the issue is impeded by the systemic conflicts of interest between them. For example, the same law firm serves as the principal legal counsel for both AFG and AAC and has been advising them as to all of the events alleged herein. AAC and AFG also share the same financial advisor in connection with their financial restructurings, including the rehabilitation proceedings, the June Settlement, and AFG's impending bankruptcy. The directors of AAC and AFG have been identical, and there is significant overlap between their officers. This common management further demonstrates the

utter lack of arm's length dealing between these two entities despite their dire financial condition.

7. Because AAC and AFG have been unwilling to commit to refrain from fraudulent transfers from AAC to AFG without fair consideration, the Policyholders seek relief from this Court to enjoin specific actions that AFG may take to cause a fraudulent transfer and thereby further erode the resources that are available to pay AAC's policyholders and creditors. While any rehabilitation or liquidation proceedings of AAC are ongoing, AFG should be enjoined from permitting any value to be transferred to AAC's equity holders or the AFG Affiliates, whether through utilizing AAC's net operating losses, dividend payments, or the extension of credit, through intercompany transfers or otherwise.

8. Specifically, by this Complaint, the Policyholders seek to enjoin AFG and the AFG Affiliates, while the Segregated Account is in rehabilitation or liquidation or until all AAC's policyholders' claims are paid in full, including the payment in full of any surplus notes used to satisfy AAC's policyholders' claims, from accepting any dividends or transfers from AAC; and, in the event that AFG or an AFG Affiliate receives any future dividends or transfers from AAC, to require it to return any such dividends or transfers to AAC. The Policyholders also seek to enjoin AFG and the AFG Affiliates from utilizing any of AAC's net operating losses to offset any of their income without directly and immediately compensating AAC for such net operating losses. The Policyholders further seek to prevent AFG and the AFG Affiliates from utilizing intercompany accounts with AAC and its subsidiaries to finance AFG's or the AFG Affiliates' operations. The Policyholders also bring this action under the Fraudulent Conveyance provisions of the New York Debtor and Creditor law section 270 *et*

seq. against Defendants AFG and Unknown Preferred Shareholders to set aside fraudulent conveyances from AAC to such Defendants.

THE PARTIES

9. Plaintiff Aurelius Capital Management, LP is incorporated in Delaware, with its principal place of business in New York.
10. Plaintiff Fir Tree, Inc. is incorporated in New York, with its principal place of business in New York.
11. Plaintiff King Street Capital, L.P. is incorporated in Delaware, with its principal place of business in New York.
12. Plaintiff King Street Capital Master Fund, Ltd. is organized under the laws of the British Virgin Islands, with its headquarters located in the British Virgin Islands.
13. Plaintiff Monarch Alternative Capital LP is incorporated in Delaware, with its principal place of business in New York.
14. Plaintiff Stonehill Capital Management LLC is incorporated in Delaware, with its principal place of business in New York.
15. Plaintiffs are owners of or managers of funds that own securities and other indebtedness insured by AAC and are creditors of and hold present claims against AAC.
16. Ambac Financial Group, Inc. is incorporated in the state of Delaware and has its principal place of business in New York at One State Street in New York City, from which AAC also operates its business.
17. Unknown Preferred Shareholders of AAC are those preferred shareholders who received the 2009 Dividends (defined below).

JURISDICTION AND VENUE

18. Jurisdiction in this Court is appropriate pursuant to N.Y. C.P.L.R. 302 because, among other things, AFG transacts business in the state of New York.

19. Venue is properly placed in this county pursuant to N.Y. C.P.L.R. 503(c) because AFG has its principal place of business in this county.

FACTUAL ALLEGATIONS

AFG and AAC's Businesses

20. AFG is a holding company and the parent of AAC.

21. AAC is the principal operating, wholly-owned subsidiary of AFG.

22. AFG, through its subsidiaries, provided financial guarantees and financial services to clients in both the public and private sectors around the world. AFG's activities are divided into two business segments: (i) financial guarantee and (ii) financial services.

23. AFG provided financial guarantee services for public and structured finance obligations through AAC. AAC offered financial guaranty insurance on investment grade municipal finance and structured-finance debt obligations, such as municipal bonds and residential mortgage-backed securities. Financial guaranty insurance provides an unconditional guaranty that protects the holder of a fixed-income obligation against non-payment of principal and interest when due.

24. Through its financial services subsidiaries, AFG provided financial and investment products, including investment agreements, funding conduits, interest rate, currency and total return swaps, principally to the clients of its financial guarantee business. AAC insured all of the obligations of AFG's subsidiaries that wrote financial services business.

The Decline of AAC

25. Since the subprime mortgage crisis began, (i) AAC's liabilities mounted as an increasing number of policyholders either brought policy claims or were projected to have substantial future policy claims due to the defaults and deterioration of the underlying issuers; (ii) AAC's claims-paying resources dwindled as many of its long-term investments, which included residential mortgage-backed securities, lost value and could not be liquidated at fair market value to meet increasing claims; and (iii) AAC's credit ratings from the major credit rating agencies like Moody's and Standard and Poor's plummeted from the highest possible "AAA" level in late 2007 to levels indicating "extremely weak" or "very poor" financial security by mid-2009.

26. In 2008, AAC ceased writing new policies and began a functional run-off of its business because of AAC's deteriorating financial condition and lowered credit ratings, which began in late 2007.

27. Despite the fact that AAC had ceased writing new policies and began a functional run-off of its business, AAC transferred dividends to its parent corporation, AFG, and to preferred shareholders.

28. Around this time, OCI increased its oversight of AAC's capital position, financial health, and business activities and retained financial advisors and legal counsel to assist OCI.

29. By 2009, OCI and its legal and financial advisors were working on AAC-related matters on nearly a daily basis.

30. As AAC's claims payments and projected loss impairments mounted and its liquid claims-paying resources eroded, OCI determined that some type of regulatory action

under Wis. Stat. Chapter 645 (Wisconsin's insurance rehabilitation and liquidation chapter) would be necessary.

31. Accordingly, on March 24, 2010, the Board of Directors of AAC (the "AAC Board") unanimously adopted several resolutions to implement a restructuring plan under Wis. Stat. Chapter 645 in light of AAC's "deteriorating financial position." (AAC March 24, 2010 Board Resolution, at 1.)

32. That same day, March 24, 2010, OCI petitioned the Circuit Court of Dane County, Wisconsin to enter an order permitting such restructuring. In support, OCI noted that AAC's business and financial position had declined to the point that they created a potential financial hazard to policyholders, creditors, and the public. (Rehabilitation Petition, at 4.)

33. On March 24, 2010, the Circuit Court of Dane County, Wisconsin entered the Order for Rehabilitation of AAC's Segregated Account.

The Dividends

34. In 2008, AAC paid \$218,539,800.00 in dividends to AFG (the "2008 Dividends"). Policyholders requested, both informally and formally, information relating to the financial condition of AAC dating back to January 1, 2008. AAC, AFG, and OCI have consistently refused to provide that information to Policyholders. On information and belief, AAC was insolvent or had unreasonably small capital at the time these dividends were paid.

35. In December 2008, AAC faced the need for a significant capital injection and, therefore, AAC exercised put options pursuant to certain put option agreements with each of Dutch Harbor Finance Sub-Trusts I, II, III and IV and each of Anchorage Finance Sub-Trusts I, II, III and IV (together, the "Sub-Trusts").

36. Thereafter, the Sub-Trusts distributed AAC preferred stock to the holders of those certain asset-backed capital commitment securities (the "ABC Securities"), and, per the terms of their creation, the Sub-Trusts dissolved.

37. AAC received \$800 million in return for the issuance of the preferred stock, \$700 million of which was received by December 31, 2008.

38. During the following fiscal year ending December 31, 2009, AAC paid \$12,509,301.00 in dividends (the "2009 Dividends" and together with the 2008 Dividends, the "Dividends") on the preferred stock to the Unknown Preferred Shareholders of the AAC preferred stock. Again, Policyholders have requested information from AAC, AFG, and OCI that would allow them to evaluate AAC's financial condition fully, but they have not received anything in response. On information and belief, AAC was insolvent or had unreasonably small capital at the time these dividends were paid.

The Tax Sharing Agreement

39. On or about July 18, 1991, AMBAC Inc., AMBAC Indemnity Corporation, American Municipal Bond Holding Company, and HCIA entered into a Tax Sharing Agreement (as amended on October 1, 1997, and on December 16, 2009, the "Original Tax Sharing Agreement").

40. The Original Tax Sharing Agreement obligates members of the consolidated tax group to pay AFG for their portion of the group's tax liability. As the parent of the tax group, AFG then makes tax payments to the IRS on behalf of the members of the tax group.

41. Under the Original Tax Sharing Agreement, if a member of the tax group generates net operating losses ("NOLs") but is unable to use such NOLs in a given tax year,

AFG may utilize those NOLs in that given tax year to reduce the tax group's liability. If a member whose NOLs were so utilized subsequently generates income against which the member could have applied its NOLs had AFG not used them, that member is reimbursed for those NOLs through a reduction of its share of the group's tax liability in that year in which the member generated income. Thus, AFG effectively reimburses the member for AFG's prior use of the NOLs.

42. On June 7, 2010, AFG (formerly known as AMBAC Inc.), AAC (formerly known as AMBAC Indemnity Corporation), and thirteen other corporations that are parties to and members of the tax group covered by the Original Tax Sharing Agreement (collectively, the "AFG Tax Subgroup") executed Amendment No. 3 to the Original Tax Sharing Agreement.

43. Amendment No. 3 amended the Original Tax Sharing Agreement to permit AFG to use AAC's NOLs to offset, without reimbursing AAC for such use, any income (including any increase in income resulting from a disallowance of any deduction, loss or credit) recognized by any member of the AFG Tax Subgroup related to the restructuring, modification, cancellation, settlement or any other similar transaction related to any debt, liability or other obligation (i) owed by a member in the AFG Tax Subgroup to a person that is not a member of the AFG Tax Subgroup and (ii) outstanding, due or otherwise accrued as of March 15, 2010.

AFG Financial Condition and Debt for Equity Exchanges

44. In its Form 10-Q for the quarterly period ending June 30, 2010, which AFG filed with the United States Securities and Exchange Commission on August 9, 2010, AFG reported that it is suffering severe financial difficulties as a result of AAC's decline. Specifically, AFG's "liquidity and solvency, both on a near-term basis and a long-term basis,

are largely dependent on dividends from [AAC] and on the value of [AAC].” (Form 10-Q, at 7.) Given AAC’s dire financial condition, however, it is “highly unlikely” that AAC will be able to make such dividends, and AFG’s management “has concluded that there is substantial doubt about the ability of [AFG] to continue as a going concern.” (*Id.*)

45. Consequently, AFG reported that it is “pursuing a restructuring of its outstanding debt through a prepackaged bankruptcy proceeding”, that “[t]here can be no assurance that any definitive agreement will be reached” to permit such a prepackaged bankruptcy proceeding, and that, failing such an agreement, AFG “would likely need to seek relief under Chapter 11 of the United States Bankruptcy Code.” (*Id.* at 8.)

46. Nevertheless, on June 11, 2010, AFG entered into a series of debt for equity exchanges with certain holders of the Company’s 9 3/8% debentures, due August 2011 (the “Debentures”), pursuant to separate agreements.

47. Pursuant to these agreements, AFG (i) issued an aggregate of 4,810,355 shares of its common stock in exchange for \$8.112 million in aggregate principal amount of the Debentures and (ii) agreed to issue 225,713 additional shares of its common stock in exchange for an additional \$388,000 in aggregate principal amount of the Debentures.

48. No commission or other remuneration was paid or given directly or indirectly in connection with the June 11 exchanges, and such exchanges are exempt from registration under Section 3(a)(9) of the Securities Act of 1933, as amended.

49. On June 25, 2010 and June 28, 2010, AFG entered into a series of additional debt for equity exchanges with certain holders of the Debentures, pursuant to separate agreements.

50. Pursuant to these agreements, AFG issued an aggregate of 8,602,414 shares of its common stock to the bondholders in exchange for \$11.811 million in aggregate principal amount of the Debentures.

51. No commission or other remuneration was paid or given directly or indirectly in connection with the June 25 and 28 exchanges, and such exchanges are exempt from registration under Section 3(a)(9) of the Securities Act of 1933, as amended.

52. AFG likely will recognize income related to cancellation of indebtedness as a result of these transactions and will attempt to use AAC's NOLs to offset that income without paying any compensation to AAC for such use. It will do so at a time when AAC is insolvent or has unreasonably small capital and when AFG is unable to compensate AAC for the use of such NOLs.

COUNT I

(Actual Fraudulent Conveyance against AFG)

53. Plaintiffs repeat and incorporate the allegations in paragraphs 1 through 52 as if set forth fully herein.

54. At the time that the Dividends were declared and paid, AAC knew that the Dividends would be transferred to AFG.

55. At the time the Dividends were transferred to AFG, AFG was an insider of AAC.

56. The Dividends were undertaken and designed with the intent to hinder, delay and defraud AAC's present and future creditors, including the Policyholders.

57. Therefore, AFG has violated N.Y. DEBT. & CRED. LAW § 276.

COUNT II

(Constructive Fraudulent Conveyance
against AFG and Unknown Preferred Shareholders)

58. Plaintiffs repeat and incorporate the allegations in paragraphs 1 through 57 as if set forth fully herein.

59. At the time of the Dividends, AAC intended to incur, or believed that it would incur, debts beyond its ability to pay as the debts matured.

60. AAC was engaged in business or transactions, or was about to engage in business or transactions, for which the property remaining with AAC after the Dividends constituted unreasonably small capital. In the alternative, AAC was insolvent on the date that the Dividends were made or became insolvent as a result of the Dividends.

61. AAC received less than a reasonably equivalent value in exchange for the Dividends.

62. AFG and the Unknown Preferred Shareholders may also have received additional fraudulent conveyances which may be discovered during the discovery process.

63. Therefore, AFG has violated N.Y. DEBT. & CRED. LAW §§ 273, 274, and 275.

COUNT III

(Injunctive Relief against AFG)

64. Plaintiffs repeat and incorporate the allegations in paragraphs 1 through 63 as if set forth fully herein.

65. Policyholders seek preliminary and permanent injunctive relief prohibiting and preventing AFG, while the Segregated Account is in rehabilitation or liquidation or until all AAC's policyholders' claims are paid in full, including the payment in full of any surplus notes

used to satisfy AAC's policyholders' claims, from accepting any dividends or other transfers from AAC, and, in the event that AFG receives any future dividends or transfers from AAC, requiring it to return them to AAC.

66. Policyholders also seek preliminary and permanent injunctive relief prohibiting and preventing AFG from utilizing the AAC NOLs without immediately and directly paying AAC for such use, including any use to offset any income recognized by the AFG Tax Subgroup related to the restructuring, modification, cancellation, settlement or any other similar transaction related to any debt, liability or other obligation pursuant to N.Y. DEBT. & CRED. LAW § 279(a).

67. Policyholders also seek preliminary and permanent injunctive relief to prevent and prohibit AFG from utilizing intercompany accounts with AAC and its subsidiaries to finance their operations or for any other purpose.

68. Policyholders also seek preliminary and permanent injunctive relief to prevent and prohibit AFG from permitting any AFG Affiliate to take any action that AFG is prohibited from doing by the terms of the injunctive relief sought herein.

69. Without issuance of an injunction, Policyholders will suffer irreparable harm and have no adequate remedy at law because they will be unable to recover the dividends, transfers, or the NOLs once utilized by AFG or any AFG Affiliate.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for relief and judgment as follows:

- A. Declaring the fraudulent conveyances null and void and setting them aside pursuant to N.Y. DEBT. & CRED. LAW § 279(c);
- B. Enjoining Defendant AFG, while the Segregated Account is in rehabilitation or liquidation or until AAC's policyholders' claims are paid

in full, including the payment in full of any surplus notes issued to satisfy AAC policyholders' claims, from accepting any dividends from AAC, and, in the event that AFG receives any future dividends or transfers from AAC, requiring it to return any such dividends or transfers to AAC;

- C. Enjoining Defendant AFG from using AAC's NOLs without immediately and directly paying AAC for such use, including any use to offset any income recognized by the AFG Tax Subgroup related to the restructuring, modification, cancellation, settlement or any other similar transaction related to any debt, liability or other obligation pursuant to N.Y. DEBT. & CRED. LAW § 279(a);
- D. Enjoining AFG from utilizing intercompany accounts with AAC and its subsidiaries to finance their operations or for any other purpose;
- E. Enjoining AFG from permitting any AFG Affiliate to take any action that AFG is prohibited from doing by the terms of the injunctive relief sought herein;
- F. Awarding Plaintiffs all damages sustained as a result of the fraudulent conveyances, in an amount to be proven at trial, including interest thereon;
- G. Awarding Plaintiffs their reasonable costs and expenses incurred in this action, including counsel fees pursuant to N.Y. DEBT. & CRED. LAW § 276-a and as otherwise permitted by law; and
- H. Such other and further relief as the Court may deem just and proper.

JURY DEMAND

Plaintiffs hereby demand a trial by jury of all claims so triable.

RESERVATION OF RIGHTS

Plaintiffs hereby specifically reserve the right to bring any and all other causes of action that they may maintain against Defendants including, without limitation, causes of action arising out of the same transaction(s) set forth herein, to the extent discovery in this action or further investigation by the Plaintiffs reveals such further causes of action.

Dated: New York, New York
 _____, 2010

BY: _____

Patrick J. Trostle
Jenner & Block LLP
919 Third Avenue, 37th Floor
New York, New York 10022
Telephone: (212) 891-1665
Facsimile: (212) 909-0835