STATE OF WISCONSIN | CIRCUIT COURT BRANCH 9 | DANE COUNTY

In the Matter of the Rehabilitation of:

Segregated Account of Ambac Assurance Corporation

Case No. 10-CV-1576

BRIEF IN OPPOSITION TO MOTION OF CARVAL HOLDERS FOR ORDER TO SHOW CAUSE

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Taconic Capital Advisors, LP, Goldentree Asset Management, LP, Merced Capital, LP, and Whitebox Advisors, LLC, (collectively, the "*Ad Hoc* Policyholder Group") submit this brief in opposition to the amended motion (the "Motion") of the CarVal Holders[1] for an order directing the Commissioner of Insurance of the State of Wisconsin (the "Commissioner"), as Court-appointed rehabilitator (the "Rehabilitator")[2] of the Segregated Account (the "Segregated Account") of Ambac Assurance Corporation ("Ambac") under the Amended Plan of Rehabilitation, dated June 12, 2014 (the "Plan")[3], to show cause why the "Interim Payment Percentage" should not be substantially increased, and additional distributions made to holders of claims against the Segregated Account. For the reasons set forth herein, the CarVal Holders' Motion should be denied in its entirety.

PRELIMINARY STATEMENT

The CarVal Holders' effort to compel a dramatic and immediate increase in payment to Segregated Account creditors such as themselves is without merit, and the Motion should be denied. The *Ad Hoc* Policyholder Group agrees with the Rehabilitator that setting an appropriate Interim Payment Percentage requires careful consideration not only of the interests of Segregated Account creditors, but also of General Account stakeholders such as the *Ad Hoc* Policyholder

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1 The "CarVal Holders" consist of CVI GVF (Lux) Master S.a.r.1., CVF Lux Securities Trading S.a.r.1., CVI CVF II Lux Securities Trading S.a.r.1., CVI CVF III Lux Securities S.a.r.1., CVIC Lux Securities Trading S.a.r.1., CVIC II Lux Securities Trading S.a.r.1., CVI AA Lux Securities S.a.r.1., CVI CHVF Lux Securities S.a.r.1., CarVal GCF Lux Securities S.a.r.1., and CVI HH Investments LP.

2 The current Commissioner and Rehabilitator is Theodore K. Nickel.

3 The Plan and other Plan-related documents are available on the Court-approved website, www.ambacpolicyholders.com, under the tab labeled "Plan of Rehabilitation Documents."

Group that would bear a disproportionate risk from any increase in that payment percentage.[4] Throughout their Motion, the CarVal Holders cite the Rehabilitator's progress in resolving certain of the liabilities facing the Segregated Account as justifying—and even mandating—an immediate increase in the Interim Payment Percentage. Yet they fail to address the other side of the ledger: the rapidly multiplying risks facing the General Account. In reality, the General Account now faces an unprecedented array of risks, driven significantly by its approximately $10 billion exposure on insurance of Puerto Rico-affiliated securities. As a result of Puerto Rico's well-documented and constantly evolving financial turmoil, Ambac faces the prospect of suffering losses in the General Account in an amount which is simply unknowable at this time. The Motion is an ill-concealed effort by the CarVal Holders to extract value from the General Account before that prospect becomes an undeniable reality and the Segregated Account is cut off from General Account claims-paying resources. If they are successful, it is the holders of long-dated General Account-insured securities, such the *Ad Hoc* Policyholder Group, who will suffer. The CarVal Holders' request to prematurely cash-in at the expense of General Account policyholders should be denied on that basis alone.

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[4] The *Ad Hoc* Policyholder Group supports the denial of the Motion solely for the reasons set forth herein. The *Ad Hoc* Policyholder Group neither joins in nor addresses, at this time, the Rehabilitator's argument that the CarVal Holders lack standing, except to note that the *Ad Hoc* Policyholder Group's position and interest in this matter is distinguishable on numerous pertinent grounds from those of the CarVal Holders. The three factors cited in the cases relied upon by the Rehabilitator here, *Nickel v. FFI Fund Ltd.*, Appeal No. 2014AP 2033 (March 4, 2016) (citing *Foley-Ciccantelli v. Bishop's Grove Condo Ass'n., Inc.*, 2011 WI 36 para. 5, 333 Wis.2nd 402, 797 N.W.2nd 789), weigh heavily in favor of the *Ad Hoc* Policyholder Group and will be addressed in full if and when it becomes necessary.

Even if the equities of the situation were not sufficient to warrant denial of the Motion (which they are), the law is likewise compelling. The CarVal Holders' Motion is based on a slender legal reed, Wisconsin Statute 645.72(1), which purportedly requires payment to creditors "as promptly as possible." However, Wisconsin Statute 645.72(1) does not apply in rehabilitation proceedings, which are governed by Wisconsin Statutes 645.31 through 645.35. Instead, Wisconsin Statute 645.72(1) applies solely in insurer liquidation proceedings, where mandating payments to creditors "as promptly as possible" is eminently sensible. Because the Rehabilitation is not a liquidation proceeding, the Motion is wholly without a legal basis.

Accordingly, the *Ad Hoc* Policyholder Group respectfully requests that the Court deny the Motion.

PARTIES AND JURISDICTION

Interested Party. The *Ad Hoc* Policyholder Group is comprised of four entities, which, through certain of their respective managed or affiliated funds, collectively own several billion dollars in par value of bonds that are insured by Ambac's General Account. Among other things, the *Ad Hoc* Policyholder Group collectively owns over $3.3 billion in par value of the Puerto Rico Sales Tax Financing Corporation ("COFINA") Sales Tax Revenue Bonds, Series 2007A maturing 2054 (CUSIP No. 74529JAP0), which are among the largest and longest-dated bonds insured by the General Account. Because the *Ad Hoc* Policyholder Group holds among the longest-dated bonds insured by the General Account, they would bear a significant (and disproportionate) portion of the risk (and potential losses) imposed on the General Account if the Motion were to be granted.

The Movants. The *Ad Hoc* Policyholder Group understands that the CarVal Holders are creditors of the Segregated Account who seek a further and immediate transfer of resources from the General Account to the Segregated Account for their own benefit.

Respondent. The CarVal Holders seek relief against the Commissioner, as respondent, in his official capacity as Rehabilitator of the Segregated Account. Respondent has filed the "Rehabilitator's Opposition to the Motion of the CarVal Holders for an Oder to Show Cause" in this matter on March 23, 2016 (the "Rehabilitator Opposition").

Continuing Jurisdiction. Pursuant to Article 6 of the Plan and Wis. Stat. §§ 645.33(3) and 645.33(5), this Court has jurisdiction over the Rehabilitation, implementation of the Plan, the parties, and the Motion.

BACKGROUND

I. Ambac's Financial Challenges and the Reason for the Formation and Rehabilitation of the Segregated Account

Ambac is a financial guaranty insurance company regulated by the Wisconsin Office of the Commissioner of Insurance ("OCI"). Historically, Ambac's primary business involved guarantying or otherwise providing credit support for bond obligations of municipalities and similar entities. In the mid-1990s, however, Ambac began to expand its business by providing financial guaranties for structured finance products, including residential mortgage backed securities ("RMBS") and related products. (Disclosure Statement Accompanying Plan of Rehabilitation ("DS") at 3.)[5]

In 2008, as a result, of "problems arising from mortgage lending practices in the United States," RMBS and other structured finance products to which Ambac had exposure suffered significant actual and projected future losses. (DS at 3.) These losses caused corresponding

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[5] *See* Affidavit of Eric Daucher in Support of the *Ad Hoc* Policyholder Group's Opposition to the Motion of the CarVal Holders for an Order to Show Cause (the "Daucher Aff."), Ex. A. (attaching copy of the DS).

increases in Ambac's actual and projected future liabilities. (*Id.*) In 2009, the collapsing U.S. mortgage and structured finance market required Ambac to make $1.6 billion in gross claim payments (compared to an aggregate of $177 million in gross claim payments for the period running from 2003 through 2007). (DS at 3-4.) The accelerating pace of RMBS losses caused OCI to conclude that Ambac could be required to pay more than $2 billion in gross claim payments in 2010. At the same time, Ambac's claims-paying resources fell dramatically, due, in significant part, to the collapse in the fair-market value of its own long-term investments (which included RMBS). (DS at 4.) Over the 2-year period running from December 31, 2007 to December 31, 2009, Ambac's "Qualified Statutory Surplus"—meaning its contingency reserves plus policyholder surplus (including certain surplus notes)—fell 83 percent, from $6.4 billion to $1.1. billion. (*Id.*) As these losses accrued, Ambac's financial strength rating was repeatedly cut, from "AAA" to "extremely weak" or "very poor." (*Id.*)

When Ambac's own actions proved insufficient to resolve its financial challenges, OCI determined that it would be required to take affirmative regulatory action under chapter 645 of the Wisconsin Statutes to stem the RMBS-induced damage to the company. (DS at 4-5.) OCI's decision to intervene directly was driven, in significant part, by its conclusion "that, absent regulatory action, there was a growing risk that [Ambac] could become insolvent before it satisfied all of its obligations under in-force policies." (DS at 5.)

After considering several options, OCI determined that stakeholders would best be served by the creation and Rehabilitation of the Segregated Account, comprised primarily of Ambac's RMBS and structured finance liabilities. Accordingly, on March 24, 2010, the Segregated Account was formed and, upon the Commissioner's verified petition and with the consent of Ambac's board of directors, placed into Rehabilitation. (DS at 9; Order for Rehabilitation.)

Pursuant to the terms of the Order for Rehabilitation, the Commissioner was appointed as the Rehabilitator. The Court also appointed a "Special Deputy Commissioner," who, pursuant to Wis. Stat. § 645.33, was granted all powers of the Rehabilitator for purposes of carrying out the Rehabilitation.[6]

Ambac's "General Account" retained all liabilities—primarily consisting of obligations under its insurance of debt issued by municipalities and similar entities—that were not specifically assigned to the Segregated Account, as well as all assets and claims-paying resources. (DS at 57-59.)

II. Ambac's Plan: Full Preservation of the General Account, Rehabilitation of the Segregated Account

In crafting a Rehabilitation strategy, the Rehabilitator "determined that any regulatory action needed to be effective in curtailing claims payments on short-dated claims in order to avoid exhausting [Ambac]'s claims-paying resources before a fuller understanding of likely policy losses was achieved." (DS at 5.) The Rehabilitator was thus keenly aware that making significant payments to current creditors of the Segregated Account posed a significant risk to creditors holding long-dated risks. In light of this risk, the Rehabilitator "concluded that any solution adopted would need to include a temporary claims payment moratorium followed by partial cash payments on claims" against the Segregated Account. (*Id.*)

To implement this strategy, the Rehabilitator proposed and obtained approval of a Plan of Rehabilitation (as amended, the "Plan") that established General Account policyholders—such as the *Ad Hoc* Policyholder Group—as structurally senior to Segregated Account creditors, such

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[6] The current Special Deputy Commissioner is Daniel J. Schwartzer.

as the CarVal Holders. Indeed, the CarVal Holders rightly admit that "[t]he underlying rationale of the Plan . . . was to subordinate the interests of [Segregated Account] Holders and allow the liabilities of the Segregated Account to stabilize over time." (CarVal Br. at 4.)

Although the Plan is densely drafted and contains innumerable interlocking definitions, it is, at heart, a straightforward "good bank/bad bank" plan. Under the Plan, substantially all of Ambac's assets and claims-paying resources remain with Ambac's General Account (the "good bank"). The General Account, however, issued to the Segregated Account (the "bad bank") a $2 billion "Secured Note," as well as a "Reinsurance Agreement." (DS at 13-14.) In essence, the Secured Note and the Reinsurance Agreement provide that claims-paying assets of the General Account will be made available *under certain circumstances* to pay claims against the Segregated Account. (DS at 13.) Such claims against the Segregated Account are paid an "Interim Payment Percentage," originally fixed at 25 percent, but subject to increases by the Rehabilitator. (Plan § 1.304.) The Rehabilitator has, in fact, increased the Interim Payment Percentage, which currently stands at 45 percent. (IPP Notice, dated June 20, 2014.) The goal of the Motion is to immediately force the Interim Payment Percentage still higher, despite the Rehabilitator's view that such a further increase should not "be made without considerable analysis and deliberation" and, in any event, should not be made simply "to accommodate the short-term interests of a subset of investors." (Rehabilitator Opposition at 3.)

While the Rehabilitator argues that it "is afforded great discretion when making decisions about such things as whether to increase the amount of interim cash payments to policyholders" (Rehabilitator Opposition at 3) it is important to recognize that this discretion is not unbounded. In fact, the Rehabilitator and Ambac must faithfully and scrupulously follow the terms of the Plan and its attendant agreements. The sole barrier protecting the "good bank" from the "bad

bank"—i.e., protecting General Account policyholders from Segregated Account contagion—is maintained solely by covenants in the Secured Note and the Reinsurance Agreement, which provide that the General Account is not required to make payment under either instrument to the extent such payment would reduce below $100 million the "surplus" available to pay claims of General Account policyholders (the "Minimum Surplus Covenants").[7] (Secured Note § 1(c); Reinsurance Agreement § 1.04.) While theoretically providing strong protection, these Minimum Surplus Covenants can only work as intended to protect General Account

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[7] The Minimum Surplus Covenant in the Secured Note reads:

> Notwithstanding any other provision of this Note to the contrary, Maker will have no obligation to make any payment under this Note at any time that Maker's surplus as regards policyholders, as reflected on its statutory financial statements (its "Surplus"), is less than $100,000,000, or such higher amount as determined by the OCI pursuant to a prescribed accounting practice, (the "Surplus Amount"), or to the extent that such payment would result in Maker's Surplus being less than the Surplus Amount, it being understood that any principal payment deferred as a result of the foregoing shall, unless otherwise agreed by Payee, be due and payable (together with accrued and unpaid interest thereon at the rate provided in clause l(b) above, accrued through but excluding the date of payment) at such time as the payment thereof would not result in Maker's Surplus being less than the Surplus Amount.

(Secured Note § 1(c).) The Minimum Surplus Covenant in the Reinsurance Agreement reads:

> Notwithstanding any other provision of this Agreement to the contrary, Reinsurer will have no obligation to make any payment under this Agreement at any time that Reinsurer's surplus as regards policyholders, as reflected on its statutory financial statements (its "Surplus") is less than $100,000,000, or such higher amount as determined by OCI pursuant to a prescribed accounting practice (the "Surplus Amount"), or to the extent that such payment would result in Reinsurer's Surplus being less than the Surplus Amount, it being understood that any payment deferred as a result of the foregoing shall be due and payable at such time as the payment thereof would not result in Reinsurer's Surplus being less than the Surplus Amount.

(Reinsurance Agreement § 1.04.)

Ambac, the Segregated Account and the Rehabilitator have all expressly consented to the jurisdiction of this Court to enforce these covenants. (Secured Note § 15; Reinsurance Agreement § 11.04.)

policyholders if the General Account's surplus is calculated in a manner that fully and accurately reflects the risks born by the General Account.

Calculating the General Account's surplus is, in theory, straightforward—simply subtract the value of Ambac's liabilities from its admitted assets. In practice, however, that calculation at any particular time is subject to significant uncertainty. Calculating the value of Ambac's liabilities requires elaborate projections regarding likely future claims against the policies that it has issued, which span thousands of bonds and financial products, some of which mature decades in the future. These projections generally must be made in accordance with Wisconsin insurance law, which incorporates, among other things, practices prescribed by "[t]he National Association of Insurance Commissioners ("NAIC") Accounting Practices and Procedures manual ("NAIC SAP")." (Daucher Aff., Ex. B at Q06.) The NAIC SAP are further modified by various Wisconsin-specific statutory and regulatory directives. Those directives are modified still further by certain Ambac-specific directives from OCI. For example, "OCI has directed the Company to utilize a prescribed discount rate of 5.10% for the purpose of discounting both its loss reserves and its estimated impairment losses on subsidiary guarantees." (*Id.*) These directives have a significant effect on the calculation of Ambac's surplus. For example, if a lower discount rate in line with current market interest rates were applied, and all else held equal, Ambac's projections of future losses would automatically be calculated to be significantly higher, and its surplus correspondingly lower. In this respect, calculating Ambac's surplus is more art than science, and leaves significant room for error, which could be to the detriment of General Account policyholders if a sufficiently cautious approach were not adopted.

III. Mounting Risks to the General Account

Statutory mandates, accounting conventions, and OCI directives aside, Ambac's surplus is also affected by the ever-changing financial conditions of the various issuers to which it has

provided financial guaranties. While the CarVal Holders make much of the work that Ambac has done to stabilize the Segregated Account, they fail to address the mounting risks to the General Account. Indeed, while it was the Segregated Account's structured finance products that originally undermined Ambac's financial stability, the General Account, comprised of exposure to municipal and similar credits, now faces significant, unprecedented and growing risk as well.

Of particular concern is Ambac's nearly $10 billion net principal and interest exposure to debt issued by the Commonwealth of Puerto Rico and its various instrumentalities and affiliated entities. (Daucher Aff., Ex. C at 2.) As this Court may be aware, Puerto Rico has struggled financially for a number of years, but, since approval of the Plan and the most recent increase in the Interim Payment Percentage, has suffered an acute financial crisis. That crisis threatens to cause very significant losses to the General Account, and is addressed in further detail below.[8] As a result of these escalating risks, the General Account's projected losses have risen quite

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[8] The General Account also has significant exposure to other financially troubled municipalities. For example, the General Account's sixth largest exposure—totaling $625 million net par outstanding—is to Chicago, Illinois "general obligation" debt. (Daucher Aff., Ex. D.) Risk posed by that exposure has also risen precipitously since approval of the Plan, with Chicago's financial strength rating having been cut to "junk" status in mid-2015.

Other now-troubled exposures include Ambac's largest single exposure—$1.650 billion to the New Jersey Transportation Trust Fund Authority – Transportation System (rated BBB+ by Ambac), seventh largest exposure—$579 million to the Mets Queens Baseball Stadium Project (rated below investment grade by Ambac), eighth largest exposure—$508 million to the Alameda Corridor Transportation Authority, Transportation Revenue (rated BBB by Ambac), and tenth largest exposure—$480 million to Hickam Community Housing LLC (rated BBB by Ambac). Indeed, of the General Account's ten largest exposures, only three maintained an "A" rating or better by Ambac's own internal metrics at year-end 2015. (Daucher Aff., Ex. D.) The Rehabilitator admits that many of these General Account policies "have the potential for significant losses") (Rehabilitator Opposition at 11).

rapidly over the last year, and are likely to continue to rise significantly further in the coming year.

ARGUMENT

I. Increasing the Interim Payment Percentage at this Time is Inappropriate in Light of the Unprecedented Risks Facing the General Account

The Rehabilitation and the Plan were intended to ***fully*** preserve claims against the General Account from the financial contagion caused by the Segregated Account's liabilities. Indeed, rehabilitation of the entirety of Ambac's business—as opposed to the more limited rehabilitation of the Segregated Account—was rejected, in significant part, because it would "fail[] to preserve the durable coverage provided by [the General Accounts]'s financial guarantees . . . ." (DS at 8; *see also* Rehabilitator Opposition at 6.) Moreover, the Rehabilitator and the Court recognized that the liabilities of the Segregated Account posed a particularly acute risk to long-dated policies of the General Account, declaring that "[t]o continue to pay RMBS claims in full as they accrued would have treated certain policyholders inequitably by disproportionately reducing the amount of [Ambac]'s claims-paying resources in favor of certain RMBS policyholders with short-dated claims while possibly leaving insufficient resources to pay in full the many policyholders with longer-dated claims." (DS at 11.)

Strangely, the CarVal Holders contend that an increase in payments to Segregated Account creditors, such as themselves, cannot impair General Account creditors because any such payments, "while decreasing assets of the General Account, also decrease the liabilities of the Segregated Account (and thus its ultimate need to draw on assets of the General Account)." (CarVal Br. at 14.) The CarVal Holders ignore that it is always and everywhere true that liabilities can be reduced through payment. Here, however, the Rehabilitation and the Plan were and are necessary precisely because paying claims against the Segregated Account too much, too

soon poses an existential risk to Ambac as a whole, and places holders of long-dated General Account policy claims in particularly inequitable jeopardy.

The CarVal Holders thus ask the Court to ignore the fundamental structure of the Plan, and the Rehabilitation as a whole, which requires that the liabilities of the Segregated Account, and the payment thereof, be prudently and cautiously managed to avoid impairing claims against the General Account. The CarVal Holders tellingly fail to address the increasing risks to the General Account, which is particularly remarkable given the General Account's approximately $10 billion exposure to Puerto Rico-affiliated debt issuances, and the Commonwealth's widely reported financial distress. As early as June 28, 2015—after the amended Plan was approved and the Interim Payment Percentage was last increased—Puerto Rico Governor Alejandro Garcia Padilla openly declared that Puerto Rico's broad debt stack "is not payable." On December 1, 2015, Puerto Rico, for the first time in its history, purportedly implemented a "clawback," removing a substantial amount (all, in the case of some issuances) of the revenues supporting approximately $1.3 billion principal amount of debt that the General Account has insured ($2.7 billion of total debt service).

Making clear the scope of the potential default, on February 1, 2016, Puerto Rico released a proposal for a general restructuring of its debt through an enormous distressed debt exchange. The proposed exchange is intended to affect approximately $49.2 billion of Puerto Rico-affiliated issuances, including ***all*** Puerto Rico-related debt insured by Ambac's General Account. Under the terms of the proposed exchange, these securities would suffer enormous losses. For example, COFINA bonds—previously seen and treated as the "gold standard" of Puerto Rico-affiliated securities—would suffer an average of a 51 percent principal loss. The Commonwealth's proposal, if implemented, in and of itself could result in total claims against

the General Account exceeding $5 billion. In addition to the Commonwealth's actions, officials within the U.S. federal government have prepared draft legislation to effect a wholesale non-consensual restructuring of the Puerto Rico-affiliated debt issuances.[9] In short, some Ambac-insured Puerto Rico-affiliated securities are virtually certain to result in very significant losses for the General Account. Given the volatility and unprecedented nature of the situation, however, the full amount and timing of such losses are virtually unknowable at this time.

It is against this backdrop that the Motion should be evaluated. That the CarVal Holders have filed the Motion at this juncture—while failing to address the risks facing the General Account—is no coincidence. The timing and content of the Motion and its supporting documents should be seen for what they are: an effort to extract value for Segregated Account creditors before the risks to the General Account become fully manifest through hard defaults, and thus impossible to ignore. The CarVal Holders readily admit that their unpaid claims are accruing at the generous rate of 5.10 percent. This accrual will continue as the General Account liabilities crystallize in the future. The holders of Segregated Account obligations will not suffer any increased risk as this prudent course is pursued.

Finally, there is no merit to the CarVal Holders' suggestion that the Rehabilitator's "stress case" scenario represents the "worst case" that should be considered in determining an Interim Payment Percentage. As the Disclosure Statement itself plainly and presciently states,

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[9] To muddy the water even further, in mid-2014, Puerto Rico enacted the "Debt Enforcement and Recovery Act," which purported to provide a Puerto Rican law for non-consensually restructuring the debts of certain of Puerto Rico's most financially troubled instrumentalities. Although that legislation was struck down by U.S. federal courts, the Supreme Court of the United States agreed to review those decisions on *certiorari* and, on March 22, 2016, heard oral argument in the matter. The Supreme Court's decision remains pending.

"[t]he ultimate losses resulting from General Account policies may exceed both the General Account Base Case Loss Estimates and the General Account Stress Case Loss Estimates, perhaps materially, ***and such estimates do not represent a cap on prospective losses***." (DS at 59 (emphasis added); *see also* Rehabilitator Opposition at 20, 21.) And in any event, the Rehabilitator's "stress case" scenario does not reflect the most recent adverse developments in Puerto Rico detailed above.

Increasing Segregated Account distributions now—just as the General Account is beginning to face its first period of significant stress—is the antithesis of the needed thoughtful and conservative approach to increasing payments to Segregated Account creditors contemplated by the Plan, and risks thwarting the goal of the Rehabilitation. To the contrary, increasing the Interim Payment Percentage for Segregated Account creditors at this juncture could bring about exactly the risk that the OCI feared when it ordered Rehabilitation for the Segregated Account—exhaustion of claims-paying assets for the benefit of short-dated liabilities, to the detriment of holders of long-dated policies. (DS at 11.)

II. Wisconsin Statute Section 645.72(1) Does Not Apply to the Rehabilitation

The Motion should also be denied because Wisconsin Statute section 645.72(1), the sole statutory basis cited by the CarVal Holders as compelling an increase in the Interim Payment Percentage at this juncture, simply does not apply in rehabilitation proceedings generally, or this Rehabilitation in particular. As made clear by the Order for Rehabilitation, the Plan and the Wisconsin insurance statutes, the Rehabilitation is governed by Wisconsin Statute sections 645.31 through 645.35. In contrast, Wisconsin Statute section 645.72 applies only to insurance company liquidations, as demonstrated by its references to actions that shall be taken by "the liquidator" in furtherance of the "expeditious completion of the liquidation." Wis. Stat.

§ 645.72(1). Indeed, the Court of Appeals has considered and rejected the argument that similar liquidation-specific rules apply to the Rehabilitation, declaring:

> It is plain by the language of these statutes that they apply only in liquidation proceedings. There is no language in any of these statutes from which it can be reasonably inferred that these statutes apply in rehabilitation proceedings.

In re Ambac Assur. Corp., 2013 WI App 129, ¶ 53, 351 Wis. 2d 539, 578, 841 N.W.2d 482, 501. As the Rehabilitator correctly argues, the same result pertains here to section 645.72(1), leaving the CarVal Holders without a statutory basis for their Motion (Rehabilitator Opposition at 15-17).

CONCLUSION

For the foregoing reasons, the *Ad Hoc* Policyholder Group respectfully requests that the Court deny the Motion for an Order to Show Cause.

Dated: New York, New York
March 25, 2016

Respectfully submitted,

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