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In the Matter of the Rehabilitation of:

Case No. 10-CV-1576

**Segregated Account of Ambac Assurance Corporation**

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**REPLY IN SUPPORT OF MONTEREY BAY MILITARY HOUSING, LLC AND  
MONTEREY BAY LAND, LLC'S MOTION TO RECONSIDER**

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Contrary to the Commissioner's argument, plaintiffs' subpoena in the *Monterey* action does nothing to violate this Court's prior orders. The Court expressly limited its April 5, 2016 Order to discovery taken "in this proceeding." The *Monterey* action—a California action related to the General Account—is not an action "in this proceeding." Even the Commissioner recognized the distinction in its recent motion seeking to clarify this Court's prior orders, claiming that such clarification "would be helpful to courts in other jurisdictions that must decide the legal ramifications of these Proceedings for the General Account." (7/15/16 Rehabilitator's Motion to Confirm and Declare the Nature of These Proceedings ¶ 6.) Having argued the *Monterey* court requires "help[]" to determine whether an Ambac default has occurred—and having conceded the *Monterey* court has jurisdiction to make such a ruling—the Commissioner now seeks to block plaintiffs from taking discovery that would inform the *Monterey* court's determination. Not only is the Commissioner's position legally incorrect, it is fundamentally unfair. The Commissioner should not be permitted to dictate the outcome of unrelated litigation like *Monterey* through the selective disclosure of information.

To be clear, plaintiffs do not argue that the Commissioner may not assert his regulatory privilege. But the Commissioner has made a blanket assertion of privilege, rather than lodging objections to specific requests and providing a basis for efforts to meet and confer or to move for

more specific modifications to the subpoena. This indiscriminate approach is unjustified as the subpoena seeks third-party communications and facts—not mental impressions or strategy—underlying the Commissioner’s prior testimony and briefing in support of Rehabilitation. If the *Monterey* plaintiffs are permitted to proceed with the subpoena, the Commissioner will still be entitled to make all appropriate objections, including based on his regulatory privilege. Accordingly, neither the Commissioner nor the Rehabilitation Proceeding will be prejudiced by the taking of appropriate discovery in the unrelated *Monterey* action; conversely, the *Monterey* plaintiffs will be unduly prejudiced by the Commissioner selectively withholding information that will inform the *Monterey* court’s legal determination.

Moreover, the Commissioner’s argument that the rules of civil procedure don’t apply in this proceeding misses the point. The Uniform Interstate Depositions and Discovery Act - adopted by both Wisconsin and California - incorporates by reference “Wisconsin’s rules and statutes relating to discovery,” and Wisconsin law states that a foreign subpoena may only be quashed “if it is unreasonable and oppressive.” Wis. Stat. §§ 805.07(3), 887.24(5)-(6)(a). The fact that discovery *in this Rehabilitation Proceeding* is not subject to the rules of civil procedure does nothing to eliminate this statutory requirement for a *foreign* subpoena.

For the reasons stated above and in their original motion, the *Monterey* plaintiffs respectfully request that this Court reconsider its November 23rd Order.

Dated: December 20, 2016.

Respectfully submitted,  
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