STATE OF WISCONSIN CIRCUIT COURT DANE COUNTY

In the Matter of the Rehabilitation of:

SEGREGATED ACCOUNT OF AMBAC ASSURANCE CORPORATION

Case No. 10 CV 1576
Hon. Richard G. Niess

OBJECTIONS TO THE REHABILITATOR'S PROPOSED SECOND AMENDED PLAN

Pursuant to this Court's September 26, 2017 Scheduling Order, the MHPI Projects[1] submit the following objections to Article 6.13 of the Rehabilitator's Motion to Further Amend the Plan of Rehabilitation Confirmed on January 24, 2011 to Facilitate an Exit from Rehabilitation ("Proposed Plan"). As drafted, Article 6.13 of the Proposed Plan asks this Court to adjudicate retroactively whether an Ambac/Credit Enhancer Default—as defined in certain MHPI Project policies located in the General Account—has occurred. Whether an Ambac/Credit Enhancer Default has occurred is an issue before seven state courts in litigation between the MHPI Projects and Ambac. Neither Ambac nor the Rehabilitator disputes that these

[1] The "MHPI Projects" are Monterey Bay Military Housing, LLC and Monterey Bay Land, LLC (plaintiffs in *Monterey Bay Military Housing LLC and Monterey Bay Land LLC v. Ambac Assurance Corp.*, No. 15CV000599, Superior Court of the State of California, County of Monterey), Carlisle/Picatinny Family Housing LP (defendant in *Ambac Assurance Corp. v. Carlisle/Picatinny Family Housing Limited Partnership*, No. 2015-6348, In the Court of Common Pleas Cumberland County, Pennsylvania), Fort Bliss/White Sands Missile Range Housing LP (defendant in *Ambac Assurance Corp. v. Fort Bliss/White Sands Missile Range Housing LP*, No. 2016DCV0094, In the District Court of El Paso County Texas, 205th Judicial District), Meade Communities LLC (plaintiff in *Meade Communities LLC v. Ambac Assurance Corp.*, No. C-02-CV-15-003745, In the Circuit Court for Anne Arundel County, Maryland), Riley Communities, LLC (defendant in *Ambac Assurance Corp. v. Riley Communities, LLC*, No. 2016-CV-000026, In the District Court of Shawnee County, Kansas), Fort Lee Commonwealth Communities (defendant in *Ambac Assurance Corp. v. Fort Lee Commonwealth Communities, LLC*, No. CL16000072-00, In the Circuit Court for the City of Roanoke, Virginia), and Fort Leavenworth Frontier Heritage Communities, II, LLC (defendant in *Ambac Assurance Corp. v. Fort Leavenworth Frontier Heritage Communities, II, LLC*, No. 2017-CV-000216, In the District Court of Shawnee County, Kansas); Bragg Communities LLC; Fort Detrick/Walter Reed Army Medical Center Housing LLC; Polk Communities LLC; Rucker Communities LLC; and Stewart Hunter Housing LLC.

courts have jurisdiction over this dispute; indeed Ambac has submitted to jurisdiction in these proceedings. Proposed Article 6.13 is contrary to this Court's prior statement that it would "not seek to decide the merits of disputes involving the General Account that are pending in other courts." Instead the provision would usurp the authority of the state courts with clear authority to decide this issue.

INTRODUCTION

From the inception of this Rehabilitation, this Court, Ambac, and the Rehabilitator have made clear that the Rehabilitation Court would not exercise jurisdiction over policies in Ambac's General Account. This Court has made clear the Rehabilitation "pertains solely to the Segregated Account" and "does not pertain to the policies . . . in Ambac's General Account." (3/24/10 Rehabilitation Order, ¶ 2.) Thus, in a prior order, this Court specifically held that it would "run counter to OCI's stated purpose" to find that these proceedings had any effect on policies in the General Account. (10/24/16 Order, ¶ 10.) Yet, despite this Court's clear directive that it would not adjudicate the rights of parties to policies in the General Account, Article 6.13 of the Proposed Plan seeks unprecedented relief and asks this Court to "eliminate [a] legal dispute" regarding the MHPI Project policies in the General Account (Rehabilitator's Br. at 27), which is properly pending in other courts. Specifically, proposed Article 6.13 provides that "[a]s of the Effective Date, **any default, event of default, or other event or circumstance relating to AAC**, the Segregated Account, or any subsidiary thereof, then existing or alleged to exist (or that would exist with the passing of time or the giving of notice or both), **under any agreement will be deemed to be cured and not to have occurred or existed, now, in the past or in the future ….**" (emphasis added)**.**

This provision seeks to usurp the jurisdiction of state courts to whom Ambac has submitted this dispute, and who this Court stated have properly assumed jurisdiction over this issue. (10/11/16 Hr'g Tr. 4:16-22.)

BACKGROUND

A. The MHPI Projects' Policies With Ambac.

The MHPI Projects are public-private joint ventures between private developers and the United States Army, formed pursuant to the Military Housing Privatization Initiative ("MHPI") established by Congress in 1996, to develop, construct, and maintain housing at military bases around the country. In order to accomplish this large-scale construction and development, each MHPI Project took out a loan (often hundreds of millions of dollars) and purchased from Ambac a surety bond, guaranteeing one year of principal and interest, as well as credit enhancement insurance. It is undisputed that the MHPI Project policies are in the General Account.

B. Ambac Initiates Litigation Against the MHPI Projects, and the Parties Submit Their Disputes to Seven State Courts.

Under the terms of the MHPI Projects' loan documents, the issuer of the Projects' surety bonds was required to maintain specific credit ratings. When Ambac's credit ratings were downgraded in 2008, the surety bonds fell below the required ratings. Over seven years later, in 2015, Ambac initiated litigation seeking to exercise the rights of the senior Lender to enforce provisions in the loan documents that would require the MHPI Projects to collectively place hundreds of millions of dollars ear-marked for housing development into reserve accounts, unable to be spent for the Projects' benefit. The MHPI Projects resisted Ambac's belated demand for cash funding on several grounds, including that the demand was barred by the applicable state statutes of limitations and that Ambac no longer had standing to exercise the rights of the senior Lender because an Ambac/Credit Enhancer Default had occurred under the

loan documents. This dispute is currently pending before seven separate state courts, which Ambac concedes have jurisdiction to decide the issue ("MHPI Litigation").

The MHPI Litigation has been been pending for over two years. In two of the cases, the state courts already have entered final judgments against Ambac, finding that its demand that the MPHI Projects cash fund their reserve accounts was barred by the statute of limitations. (Ex. 1, 6/19/17 *Monterey* Decision; 10/26/17 *Meade* Opinion and Order.) Motions for summary judgment—including on the issue of Ambac/Credit Enhancer Default— are currently pending in two other cases, *Ambac Assurance Corp. v. Fort Bliss/White Sands Missile Range Housing LP*, No. 2016DCV0094, In the District Court of El Paso County Texas, 205th Judicial District, and *Ambac Assurance Corp. v. Riley Communities, LLC*, No. 2016-CV-000026, In the District Court of Shawnee County, Kansas.

C. There Has Been an Ambac Default.

It is undisputed that under the MHPI Projects' loan agreements, an Ambac/Credit Enhancer Default occurs upon "(c) a court of competent jurisdiction or another competent regulatory authority enter[ing] a final and nonappealable order, judgment or decree (i) appointing a custodian, trustee, agent or receiver for Ambac or for all or any material portion of its property or (ii) authorizing the taking of possession by a custodian, trustee, agent or receiver of Ambac (or taking of possession of all or any material portion of Ambac's property)."

In the underlying MHPI Litigation, Ambac's own experts have conceded that the (c)(i) and (c)(ii) triggers have been satisfied by the commencement of this Rehabilitation proceeding. Dan Jones, Managing Director with FTI Consulting, agreed that "[t]he court's order authorized the rehabilitator to take possession of the 1.9 billion that was transferred from the general account to the segregated account pursuant to the terms of the reinsurance agreement[.]" (4/18/17 D. Jones Dep. Tr. 151:12-18.) And Stephen Prowse, Senior Managing Director with

FTI Consulting, likewise admitted that the funds transferred to the Segregated Account pursuant to the Secured Note were Ambac's property prior to transfer and that the Secured Note has been exhausted. (4/19/17 S. Prowse Dep. Tr. 30:4-31:2, 73:23-74:9.) Dr. Prowse further conceded that the Reinsurance Agreement operated to allow the Rehabilitator to "make demand for payment from the general account to the segregated account to pay its claims" (*id.* at 44:13-21), and that the amount of Ambac assets available for draw down under the Reinsurance Agreement "could certainly . . . far exceed" the $100 million surplus floor. (*Id.* at 38:16-20.) In short, both of Ambac's experts concede, as they must, that the Rehabilitator was authorized by this Court's orders to take, and he did take, over $3.9 billion in assets from the General Account to pay permitted claims of the Segregated Account.[2]

The issue of whether an Ambac/Credit Enhancer Default has occurred under the terms of the MHPI Project documents has not, in contrast, been submitted to this Court for adjudication. The separate question of whether a provision in the Proposed Plan can be deemed to "cure" such a default is both premature and one that would require resolution of a host of disputed facts. As this Court has already made clear, the proper forums for resolving these issues are the state courts where this dispute is pending and which have authority over the MHPI Projects' policies in the General Account that are directly at issue. The Rehabilitator's effort to usurp the jurisdiction of these state courts, and to short-circuit this complicated issue in a Rehabilitation Plan subject to no discovery[3] and without any supporting findings of fact, is improper.

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[2] The MHPI Projects' expert Bruce Deal, Managing Principal with Analysis Group, likewise has opined that the economic effect of the Segregated Account's capitalization structure was to allow the Rehabilitator to take a material portion of the General Account's property and that the Rehabilitator has taken nearly $4 billion in General Account assets under the Secured Note and the Reinsurance Agreement. (Ex. 2, 2/02/17 *Meade* Pl.'s Suppl. Interrog. Resp. No. 20 at 15-22; 4/11/17 *Meade* Pl.'s Suppl. Resp. to Interrog. No. 20 ¶¶ 3, 29.)

[3] At a minimum, the MHPI Projects are entitled to basic discovery regarding any supposed "cure" of an Ambac Default. Concurrent with the filing of these Objections, the MHPI Parties have served targeted discovery requests on this issue, attached hereto as Exhibit 3.

OBJECTIONS

The MHPI Projects assert three objections to the Proposed Plan. ***First***, the Proposed Plan impermissibly seeks to declare that there has been a "cure" of the existing Ambac Defaults under policies allocated to the General Account. Any such ruling would exceed the limited scope of this Rehabilitation recognized both by this Court and the Rehabilitator. ***Second***, the request for this Court to moot ongoing litigation pending before other state courts is contrary to well-established notions of comity. ***Third,*** the Proposed Plan seeks retroactively to undo Ambac Defaults at the MHPI Projects, which would violate Due Process.

I. MHPI PROJECTS' FIRST OBJECTION

The MPHI Projects object that the Proposed Plan impermissibly asserts jurisdiction over policies in the General Account. For years this Court has properly declined to interfere with the General Account and to decide whether an Ambac Default has occurred under the MHPI Project policies in the General Account.

A. Modification of the MHPI Project Policies Is Beyond the Scope of This Proceeding.

In March 2010, the Wisconsin Commissioner of Insurance moved for entry of an order initiating a rehabilitation of the Segregated Account of Ambac and for temporary injunctive relief to preserve the status quo in the Segregated Account. When these proceedings began, the Rehabilitator was aware that many of Ambac's contracts "contained provisions restricting Ambac's transfer of assets away from the General Account." (Confirmation Order, ¶ 70.) Based on these contractual provisions, the Rehabilitator was concerned that if this Court asserted jurisdiction over these policies in the General Account, the result could lead to widespread litigation and collapse of Ambac. (*Id*.) The Rehabilitator believed "[a] general or full rehabilitation of Ambac could have triggered costly defaults[.]" (Confirmation Order, ¶ 51.)

Thus, the Rehabilitator adopted a "surgical approach" to limit the fallout from potential defaults in Segregated Account policies. (Clarification Order, ¶¶ 7-8.) The Segregated Account created by order of this Court was structured in a manner so that Ambac's most toxic policies were allocated to the Segregated Account and subjected to rehabilitation while healthy policies (such as the MHPI Policies at issue in the state court litigations) remained in the General Account and outside the Rehabilitation proceeding. (Confirmation Order, ¶ 61; Clarification Order, ¶ 3.) The Rehabilitator also designed, and this Court confirmed, a structure to capitalize the Segregated Account that would "isolate the claims-paying resources in the general account from the liabilities in the segregated account." (Clarification Order, ¶ 15.) In turn, the Rehabilitator chose "to limit this rehabilitation to the Segregated Account, as opposed to all of Ambac." (Clarification Order, ¶ 5.)

Likewise, the Commissioner "emphasized in the [Verified] Petition and proposed [Rehabilitation] Order [] this proceeding pertains ***solely to the Segregated Account***" and made clear "[t]he Commissioner is <u>not</u> asking this Court to place the Ambac General Account into rehabilitation as part of this proceeding." (3/24/10 Commissioner's Brief In Support of Entry of Order for Rehabilitation, p.25 (original emphasis); *see also* 3/24/10 Verified Petition at 1.)

This Court therefore ordered, "This proceeding pertains solely to the Segregated Account and to the policies, contracts, rights, assets, equity ownership interests, and liabilities allocated to it in accordance with Wis. Stat. § 611.24, and does not pertain to the policies, contracts, assets, equity ownership interests, and liabilities remaining in Ambac's General Account." (3/24/10 Rehabilitation Order, ¶ 2; *see also* 3/24/10 Injunctive Order, p.1: "[T]he injunctive relief granted below does not apply to policies or other contracts which remain in the Ambac General Account.").) The Rehabilitation Plan proposed by the Rehabilitator and approved by this Court

reaffirmed that "[t]his Plan pertains solely to the Segregated Account, which acts through the Rehabilitator and the Management Services Provider. . . . Except as may be specifically stated herein, in the Disclosure Statement or in the Segregated Account Operational Documents, this Plan does not pertain to the assets or liabilities in the General Account." (1/24/11 Rehabilitation Plan, p.1.)

Notwithstanding the carefully designed structure of the Rehabilitation, the Proposed Plan now seeks to create jurisdiction over the MHPI Projects' policies in the General Account, with the express intent to impact litigation in state courts to whose jurisdiction Ambac has submitted itself. Article 6.13 contradicts the Rehabilitator's prior unequivocal representation to this Court: "[B]ecause the Ambac policies relevant to the MHPI Cases have not been allocated to the Segregated Account, but remain instead with the General Account, disputes concerning these Projects ***fall outside the jurisdiction of this Court.***" (7/15/16 Rehabilitator's Motion at 6 n.6 (emphasis added).) Under the principle of judicial estoppel, this Court should hold the Rehabilitator to his word and prevent a manipulation of this proceeding. *See Harrison v. Labor & Indus. Review Comm'n*, 187 Wis. 2d 491, 497, 523 N.W. 2d 138 (Ct. App. 1994) ("The focus of judicial estoppel is to insure the integrity of the courts. It is intended to protect against a litigant playing fast and loose with the courts by asserting inconsistent positions.") (citation and quotation marks omitted); *State v. English-Lancaster*, 2002 WI App 74, ¶ 19, 252 Wis. 2d 388, 398, 642 N.W.2d 627 ("It is contrary to fundamental principles of justice and orderly procedure to permit a party to assume a certain position in the course of litigation which may be advantageous and then after the court maintains that position, argue on appeal that the action was error.").[4]

[4] Indeed, by exercising jurisdiction over policies in the General Account and purporting to grant Ambac relief under those policies, there is a substantial risk that Article 6.13 itself may amount to an independent Ambac

II. MHPI PROJECTS' SECOND OBJECTION

The Proposed Plan would also impermissibly interfere with the jurisdiction of the other state courts currently adjudicating the pendency of an Ambac Default. Proposed Article 6.13 asks this Court to do what it has ***already held*** it would not do. In 2016, the Rehabilitator requested that this Court issue an order clarifying the nature of these proceedings. In doing so, however, the Rehabilitator made clear that it was ***not*** asking this court to exercise jurisdiction over policies in the General Account:

> To be clear, the Rehabilitator is not asking this Court to construe this contractual language or to adjudicate whether there has been an 'Ambac Default' or a 'Credit Enhancer Default' within the meaning of these agreements. These issues are to be decided by the courts where the MHPI Cases are pending. ***Indeed, the Rehabilitator's position is that, because the Ambac policies relevant to the MHPI Cases have not been allocated to the Segregated Account, but remain instead with the General Account, disputes concerning these Projects fall outside the jurisdiction of this Court*** and are beyond the reach of this Court's Injunction Order. If these policies had been subject to rehabilitation, the Developers would be enjoined from asserting an Ambac Default or a Credit Enhancer Default. Because these policies are not allocated to the Segregated Account, the Injunction Order does not apply. (7/15/16 Rehabilitator's Motion, ¶ 12 and n.6.)

Recognizing that other courts had jurisdiction over this dispute, this Court properly declined to exercise jurisdiction over the issues pending in the MHPI Litigation:

> ***I'm not assuming any jurisdiction over any issue that involves Ambac*** that -- I'm not ordering any action. All I am doing and what I understand the request to be is to simply state clearly and in a concise Cliff Notes-type fashion what has been -- what has happened, what the orders of this Court have been. Not expand them. Not make any -- not assume jurisdiction over Ambac to order different things. (10/11/16 Hr'g Tr. 23:12-20 (emphasis added).)

The Court continued: "[I]t isn't a fact that I am looking to go to seven other courts and tell those courts what to do with parties in those actions. . . . I'm not telling them what to do and I'm not

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Default as an "Order for relief entered against [Ambac] under any federal or state law relating to insolvency, bankruptcy, rehabilitation, liquidation or reorganization that is final and nonappealable." *See*, *e.g.*, Monterey Project Loan Agreement (defining Ambac Default).

ordering them what to do. And I'm not even contending that it's particularly material with what they've got before them because I don't know." (10/11/16 Hr'g Tr. 24:10-18.)

This Court has further acknowledged the limits of its competent jurisdiction, stating, "Sure, if I were going to start ordering Ambac around at this point, you bet I would have issues with jurisdiction. I probably wouldn't do it." (10/11/16 Hr'g Tr. 23:21-23; *see also id* at 52:10-14 ("I'd like to [phrase the Clarification Order] in a way that I don't inadvertently blunder into another court's business. I just want to make sure that what has been done here is made clear to those other courts.").) The Rehabilitator's and this Court's acknowledgement of the limited nature of these proceedings was reflected in the final Clarification Order, which stated, "This Court does not seek to decide the merits of disputes involving the General Account that are pending in other courts." (10/24/16 Clarification Order, p.1 (citing and quoting Rehabilitation Order, ¶ 2.)

It is a well-established rule of comity that courts may not interfere with litigation pending in other forums. Wisconsin courts recognize the general rule "that a court may not enjoin or otherwise interfere with proceedings of a judicial nature in another court of coordinate jurisdiction." 1 Wis. Pl. & Pr. Forms § 2:71 (5th ed.) (citing *In re Clark*, 135 Wis. 437, 115 N.W 387 (1908); *Frederickson v. Schaumburger*, 210 Wis. 127, 245 N.W. 206 (1932); *Orient Ins. Co. v. Sloan*, 70 Wis. 611, 36 N.W. 388 (1888)); *see also Syver v. Hahn*, 6 Wis. 2d 154, 159–60, 94 N.W.2d 161 (1959) ("Where two actions between the same parties, on the same subject, and to test the same rights, are brought in different courts having concurrent jurisdiction, the court which first acquires jurisdiction, its power being adequate to the administration of complete justice, retains its jurisdiction and may dispose of the whole controversy, and no court of coordinate power is at liberty to interfere with its action."). This rule is especially applicable

when the court of coordinate jurisdiction is a foreign court. "The orderly administration of justice requires that there be some rule for avoiding the conflicting exercise of jurisdiction by two courts both of which are competent to decide the issues. Ordinarily, a court should not exercise jurisdiction over subject matter over which another court of competent jurisdiction has commenced to exercise it." *Brazy v. Brazy*, 5 Wis. 2d 352, 361, 92 N.W.2d 738 (1958) (holding Wisconsin court erred in entertaining application to modify child custody provisions after California court had already begun proceedings).

Here, the Rehabilitator openly admits that proposed Article 6.13 is designed to interfere with pending litigation; its stated purpose is to "resolve the [Ambac Default] issues" and thereby "eliminate the legal dispute." (Rehabilitator's Br. at 27.) This is beyond this Court's statutory power and constitutes impermissible interference in sovereign tribunals. Further, there is no factual basis for this Court to rule that an Ambac Default under the MHPI Policies has somehow been "cured". Whether any later action amounts to a "cure" of these takings is itself a complicated factual issue, one that may only be resolved by the other state courts overseeing the MHPI Litigation. The Rehabilitator's attempt to short circuit this complicated litigation in a summary proceeding with no discovery is a violation of judicial comity and beyond this Court's limited authority.

III. MHPI PROJECTS' THIRD OBJECTION

The proposed Article 6.13 is also an attempt to deny the MHPI Projects Due Process through an impermissible expansion of the Rehabilitator's limited authority. The Wisconsin Constitution provides, "Every person is entitled to a certain remedy in the laws for all injuries, or wrongs which he may receive in his person, property, or character; he ought to obtain justice freely, and without being obliged to purchase it, completely and without denial, promptly and without delay, conformably to the laws." Wis. Const. art. I, § 9. The wholesale removal of a

remedy is prohibited. *See State v. Diehl*, 198 Wis. 326, 223 N.W 852 (1929) ("A remedy may not be taken away altogether, but it may be changed or modified, providing it leaves an adequate remedy[.]"). In this case, the Rehabilitator intends a wholesale deprivation of any remedy for an Ambac Default. The text of the proposed Article 6.13 makes this clear, stating "any default [or] event of default . . . will be deemed to be cured and not to have occurred or existed, now, in the past, or in the future[.]" (Prop. 2d Am. Pl. at Art. 6.13.) Thus, any party injured by an undisputed occurrence of an Ambac Default could have no legal remedy because, under the proposed Article 6.13, the Ambac Default never occurred. The Rehabilitator attempts to erase history and, in his own words, "eliminate the legal dispute over this issue." (Rehabilitator's Br. at 27.)

Such a retroactive effect may—as here—be unconstitutional as applied to certain parties. *See Soc'y Ins. v. Labor & Indus. Review Comm'n*, 326 Wis. 2d 444, 463, 786 N.W.2d 385 (2010) (holding statute enjoys presumption of constitutionality, but that no such presumption is due in an as-applied challenge). In this case, Article 6.13 would result in a denial of Due Process. *See* U.S. Const. amend. XIV, § 1; Wis. Const. art. I, § 1. The provision is intended to strip the MHPI Projects of a legal remedy for the occurrence of an Ambac Default without discovery or any detailed fact-finding.

Such a result is plainly beyond the Rehabilitator's authority. When assessing the Rehabilitator's proposed plans for Rehabilitation, courts apply an abuse-of-discretion standard. *See In re Ambac Assur. Corp.*, 2013 WI APP 129, 351 Wis. 2d 539, 564-65, 841 N.W.2d 482. But it is black-letter Wisconsin law that "[a]n administrative agency has only those powers given to it by statutory authority." *Mallo v. Wisc. Dep't of Revenue*, 2002 WI 70, ¶ 15, 253 Wis. 2d 391, 407, 645 N.W.2d 853; *Vill. of Plain v. Harder*, 268 Wis. 507, 511, 68 N.W.2d 47 (1955)

("A rule out of harmony with the statute, is a mere nullity.") (quoting *Manhattan Gen. Equip. Co. v. Comm'r of Internal Revenue*, 297 U.S. 129, 134 (1936)). The Rehabilitator, acting for the Segregated Account, has no control over the MHPI Projects' policies, which are allocated to the General Account. Nor does the Rehabilitator have standing to assert or enforce the General Account's rights under the MHPI Projects' policies. As such, the Rehabilitator's attempt to seek a declaration that no default under the terms of General Account policies "occurred or existed, now, in the past or in the future" (Prop. 2d Am. Pl. at Art. 6.13), is outside his statutorily defined authority to act on behalf of the Segregated Account.[5]

Article 6.13 also is inconsistent with the express purpose of the Rehabilitation as defined by statute: "the protection of the interests of insureds, creditors, and the public generally, with ***minimum*** interference with the normal prerogatives of proprietors[.]," Wis. Stat. Ann. § 645.01 (emphasis added). The Rehabilitation statute limits the Rehabilitator's "General Power" to taking actions "necessary or expedient to reform and revitalize the insurer." Wis. Stat. Ann. § 645.33. And, even then, such exercise of power is "[s]ubject to court approval." (*Id.)* Further limiting the Rehabilitator's authority in this case is the fact that the Rehabilitation "pertains solely to the Segregated Account." (3/24/10 Rehabilitation Order, ¶ 2.)

As drafted, Article 6.13 is neither "necessary" nor "expedient" to the rehabilitation of the ***Segregated Account***. In the brief in support of the Proposed Plan, the Rehabilitator states only that there are cases "pending against the ***General Account***" involving allegations of default "associated with ***Ambac's policies***" and that the Rehabilitator "agrees" with Ambac's argument

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[5] The Rehabilitator's Plan also defies the "Carpenter standard," which the Court of Appeals discussed in *In re Ambac Assur. Corp*., 2013 WI APP 129, ¶67, 351 Wis. 2d 539, 584, 841 N.W.2d 482. As the court there stated, the "*Carpenter* standard" is "the requirement that rehabilitation plans be reasonably related to the public interest and not arbitrary or improperly discriminatory." (*Id.)* The Proposed Plan fails by any of these measures. In *In re Ambac*, the court rejected application of the *Carpenter* standard as grounds for holding that policyholders are entitled to the liquidation value of their claims in a rehabilitation proceeding. However, the principle is squarely applicable to the MHPI Projects here.

that no default occurred. (Rehabilitator's Br. at 27 (emphasis added).) The Rehabilitation does not extend to Ambac or to the MHPI Projects' policies in the General Account. This is reflected in the Rehabilitation statute, which addresses what should occur if out-of-state litigation were initiated against the ***Segregated Account***: "The rehabilitator shall immediately consider all litigation pending outside this state and shall petition the courts having jurisdiction over that litigation for stays whenever necessary to protect the estate of the insurer." Wis. Stat. Ann. § 645.34(1). Even where the Rehabilitator has direct authority over the insurer being sued (which is not the case here), the law recognizes he may not simply wrest jurisdiction away from a foreign court.

Despite having the burden to seek approval of the Proposed Plan, the Rehabilitator does not even attempt to explain how the Segregated Account will be "reform[ed] and revitalize[ed]" by Article 6.13 or why such provision is "necessary or expedient" to that process. Instead, the Rehabilitator admits the purpose of the provision is to "eliminate the legal dispute" in the MHPI Projects litigation. (Rehabilitator's Br. at 27.) Attempting to moot out-of-state litigation to which the Segregated Account (the subject of this Rehabilitation) is not a party is not within the Rehabilitator's statutorily defined purpose, and would constitute a clear abuse of the Rehabilitator's discretion.

IV. THE MHPI PROJECTS HAVE STANDING TO ASSERT OBJECTIONS TO THE PROPOSED PLAN

The MHPI Projects have standing to object to confirmation of the Proposed Plan because the proposed Article 6.13 would operate to modify and impair their contractual rights and obligations under the MHPI Projects' policies with Ambac and under certain related financing documents which refer to or incorporate the respective policies.

Confirmation of the Proposed Plan would uniquely harm the MHPI Projects, as compared to objectors to the original Rehabilitation Plan and likely the Proposed Plan. The provision directly targets their interest in litigation pending across the country. The MHPI Projects have asserted in the state litigation that all of Ambac's so called "consent" rights, which Ambac has exercised in bad faith, have been voided by the occurrence of an Ambac Default. The Proposed Plan seeks not only to reinstate Ambac's rights with respect to the surety reserve funds, but would also purport to create decades of ongoing consent rights in the future. This is beyond this Court's power and jurisdiction and gravely inconsistent with traditional notions of comity.

CONCLUSION

For the foregoing reasons, the MHPI Projects object to approval of the Second Amended Plan and respectfully request an opportunity to be heard on their objections at the Pre-Trial Hearing and the Confirmation Hearing.

Dated this 24th day of November, 2017.

KRAVIT, HOVEL & KRAWCZYK S.C.

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