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

REHABILITATOR'S SURREPLY IN SUPPORT OF ITS MOTION TO FURTHER AMEND THE PLAN OF REHABILITATION

Dated: December 29, 2017.

MICHAEL BEST & FRIEDRICH LLP

Ann Ustad Smith Bar No. 1003243
John D. Finerty, Jr. Bar No. 1018183
Justin M. Mertz Bar No. 1056938
Kimberly A. Streff Bar No. 1106358
100 E. Wisconsin Ave., Suite 3300
Milwaukee, Wisconsin 53202
Telephone: 414.271.6560
Facsimile: 414.277.0656
Email: jdfinerty@michaelbest.com

Attorneys for the Commissioner of Insurance of the State of Wisconsin, as the Court Appointed Rehabilitator of the Segregated Account of Ambac Assurance Corporation

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INTRODUCTION

> "[The Rehabilitation Court] has broad powers to enter an injunction to prevent the waste of Ambac's claims-paying resources."
>
> -- *Nickel v. Wells Fargo Bank*, 2013 WI App 129, ¶ 145, 351 Wis. 2d 539, 841 N.W.2d 482.

Since the pre-trial conference, Ambac and the COFINA Bondholders resolved the COFINA Bondholders' objections after Ambac purchased their bonds. As such, the terms of the Consensual Transaction which forms the basis for the exit of the Segregated Account from Rehabilitation is no longer subject to any objection and there is no longer a dispute as to durability. The only remaining objection in the case is not to the Transaction itself; rather, the Military Housing Project developers object only to the substance of the injunctive language of the Confirmation Order. Their objection (the "MHPI Objection") raises no factual dispute and should be decided as a matter of law based on the written submissions of the parties, subject to the Court applying an abuse of discretion standard to the Rehabilitator's proposed Article 6.13 of the Second Amended Plan.

At the pre-trial conference, the Court asked the parties to address two issues in supplementary briefs: (1) whether the Court may approve the inclusion of Article 6.13 of the Second Amended Plan; and (2) whether Wis. Stat. § 645.35(2) required a *de novo* standard of review, as the COFINA Bondholders argued.[1] As to the first issue, this Court should have no hesitation enjoining third-parties' claims alleging defaults with respect to policies in the Segregated Account; indeed, there are multiple instances in which this Court has already done so in this case. It should thus give this Court no pause that the Rehabilitator has asked for a declaration that all claims and potential claims related to policies in the Segregated Account be

[1] Although the COFINA Bondholders' objection has been withdrawn, the Rehabilitator will respond to this argument for the benefit of the Court.

deemed satisfied and any alleged defaults under those policies be deemed cured. This is a statutorily authorized mechanism employed to ensure a durable, final exit of the Segregated Account from rehabilitation.

Within this context, it should be clear why Article 6.13, which deems alleged defaults of General Account policies cured as well, is necessary to the Plan: the Segregated and General Accounts are being merged upon exit. It would be both illogical and contrary to the purposes of rehabilitation if OCI's establishment of the Segregated Account at the onset of this case could be cited as a breach of certain General Account policies — yet allow defaults as to other Segregated Account policies to be cured — when both sets of policies will, upon the exit from rehabilitation, be part of a single, unified account post-confirmation. Such an approach would amplify the artificial distinction between the Segregated Account and the General Account at the precise moment the rehabilitation concludes and the distinction ceases to exist. This would undermine the purpose and efficacy of the rehabilitation itself. Therefore, it makes logical sense to include Article 6.13 in the Plan as an action "expedient to reform and revitalize the insurer." *See* Wis. Stat. § 645.33.

As to the standard of review, the statutes and the case law are clear that the Rehabilitator should be afforded deference; simply stated, an abuse of discretion standard applies to this Court's review of a rehabilitation exit plan. *See Nickel v. Wells Fargo Bank*, 2013 WI App 129, ¶ 130, 351 Wis. 2d 539, 841 N.W.2d 482 ("We must defer to the commissioner's extensive experience and expertise in determining the best approach to protecting the interests of long-term [vs. short-term] policyholders."). Aside from the pure impracticalities associated with applying a *de novo* standard, no court has ever made such a holding and there is no compelling reason to create such a rule here. To do so would effectively make the Rehabilitation Court the regulator,

and usurp the statutory duties of the Insurance Commissioner to regulate the insurance industry for the best interests of policyholders.

Regardless, even if this Court were to read *de novo* review into the exit standards of Wis. Stat. § 645.35(2), those standards do not apply to the MHPI Objection, which argues neither that the rehabilitation has not "been accomplished" nor that the "grounds for rehabilitation still exist." Instead, the MHPI Projects argue that Wisconsin's insurance laws do not permit the Court to adopt Article 6.13, which is an issue on which the Court should afford deference to the Commissioner's interpretation of the insurance laws. *Nickel*, 351 Wis. 2d 539, ¶ 120 ("[T]he commissioner's determinations regarding the interpretation and application of statutes it is charged with administering are entitled to great weight deference."). Here, the Commissioner has determined, consistent with *Nickel*, that the insurance laws not only provide for, but require, that the business of the insurer continue untainted by the rehabilitation of a segregated account. Absent that protection, the Wisconsin laws that allow rehabilitation of a segregated account would be rendered unworkable and potentially useless, if third party claims against an insurer's polices not in a segregated account could threaten to overwhelm the insurer's claims paying ability, post-exit.

ARGUMENTS

I. THE REHABILITATION COURT SHOULD APPROVE ARTICLE 6.13 OF THE PROPOSED SECOND AMENDED PLAN

A. Article 6.13 Is Within The Scope Of The Court's Prior Orders And Actions.

As a policy matter, Article 6.13 reflects OCI's considered application of the Rehabilitation statute to Ambac as a whole. Accordingly, the Rehabilitator has made multiple motions seeking injunctive orders that would serve the same purpose for which Article 6.13 is being sought here: to protect the claims-paying ability of the General Account. This Court

granted every motion and entered the requested injunction. Not deterred, the MHPI Projects continue to object to Article 6.13 of the Second Amended Plan.[2] However, as explained in the Rehabilitator's Response, Article 6.13 is supported by this Court's prior orders, is within this Court's jurisdiction, and is necessary to effectuate the Second Amended Plan. Article 6.13 simply, but importantly, perpetuates the existing injunctive effect of the Court's prior orders.

To be clear, the MHPI Projects do not argue that this Court's prior orders were incorrect. Instead, they argue that this Court somehow now lacks the authority from actually entering the same injunctive order that would become effective upon the Segregated Account's exit from rehabilitation. That argument contradicts the record in this case. Again, as indicated in the Rehabilitator's response brief, the Military Housing Order confirmed the Confirmation Order. (Resp. at pp. 34-35.) That Order stated that "this proceeding does not pertain to the policies, contracts, assets, equity ownership interests and liabilities remaining in Ambac's General Account . . . [however] the Office of the Commissioner of Insurance of the State of Wisconsin has an interest in ensuring that Ambac does not lose legal rights. . . ." (Oct. 24, 2016 Order at pp. 1-2.) Moreover, this Court's discretion to approve Article 6.13 is further supported by the action taken by this Court to enact and enforce a previous injunction. (Resp. at p. 36.) The September 12, 2012 Order clarified that the injunction issued on January 24, 2011, was intended to prevent loss of rights by Ambac and the Segregated Account. (Sept. 12, 2012 Order at ¶ 2.) The injunction was necessary to prohibit actions that would prevent Ambac and the Segregated Account from taking steps necessary to the Rehabilitation. Similarly here, by adopting Article 6.13, this Court is exercising the same discretion it exercised in entering the previous Orders.

B. Article 6.13 Is Within This Court's Jurisdiction And Subject To Comity.

The Wisconsin insurance rehabilitation statutes, the law of this case, and Wisconsin case

[2] The Rehabilitator continues to object to the MHPI Projects' standing to object in this proceeding.

law generally, supports this Court's jurisdiction to approve the proposed Article 6.13. The Wisconsin rehabilitation statutes provide exclusive jurisdiction in this Court over matters related to the Segregated Account's delinquency. *See* Wis. Stat. § 645.04(1) ("[N]o delinquency proceeding may be commenced under this chapter by anyone other than the commissioner of this state and no court has jurisdiction to entertain, hear or determine any proceeding commenced by any other person."); *see also* § 645.33(2) (the rehabilitator's authority includes actions "necessary or expedient to reform and revitalize the insurer" and propose a plan of "reorganization . . . merger, or other transformation of the insurer."). The scope of these provisions has been determined by the Commissioner, as the Rehabilitator here, to encompass the ability to adopt Article 6.13. Consistent with the Court of Appeals holding in *Nickel*, that interpretation must be given deference.

Further, *Nickel* itself establishes that this Court has the authority to issue Article 6.13. *See Nickel*, 351 Wis. 2d 539, ¶ 145 ("[The Court] has broad powers to enter an injunction to prevent the waste of Ambac's claims-paying resources.") The *Nickel* Court held that the rehabilitation court "properly issued an injunction that is 'necessary and proper' to prevent the institution of proceedings that may interfere with the insurance rehabilitation and waste or ***lessen the value of Ambac's assets,*** to the detriment of policyholders, creditors, and shareholders alike." *Id.* ¶ 103 (emphasis added); *see also id*. at n.14. Jurisdiction of this Court was reiterated in Article 7.1 of the Second Amended Plan, which provides that this Court has jurisdiction "to hear, determine, and enforce Causes of Action that may exist by or against the Segregated Account or by or against the General Account or AAC or the Management Services Provider in regards to the Segregated Account." (Sec. Am. Plan. of Rehab., Art. 7.1.)

The MHPI Projects focus their arguments less on challenging the scope of this Court's authority to adopt Article 6.13 and more on whether courts in other states will be bound by that provision. In doing so, they criticize the Rehabilitator's reliance on *Isermann*, without providing the Court with a more similar case to consider on the issues of comity or full faith and credit. *Isermann* provides this Court with the basic legal principals to apply to these specific facts. As the Court in *Isermann* explained "[i]n deciding whether the principle of comity applies, courts should consider the public policy, convenience and protection of the interests of the state's citizens." *Isermann v. MBL Life Assurance Corp.*, 231 Wis. 2d 136, 149, 605 N.W.2d 210 (Ct. App. 1999). The Court applied comity, explaining that both Wisconsin and New Jersey have similar insurance rehabilitation and liquidation acts, which both seek to satisfy public policy objectives. *Id.*¶ 19; *See also Am. Alt. Ins. Corp. v. Am. Prot. Ins. Co.*, No. 1:11-CV-01865-AWI-SKO, 2013 U.S. Dist. LEXIS 41992, at *24 (E.D. Cal. Mar. 22, 2013) (applying comity and declining to exercise jurisdiction in California where rehabilitation order was entered in Illinois); *Morgan Stanley Mortg. Capital, Inc. v. Ins. Comm'r of Cal.*, 18 F.3d 790, 794-95 (9th Cir. 1994) (granting full faith and credit to state court's exercise of jurisdiction). The fact that these courts have afforded comity and full faith and credit further strengthens the argument that this Court has the ability to adopt Article 6.13 and enter the confirmation order.

C. Article 6.13 Is Expedient For The Segregated Account To Exit Rehabilitation.

As a policy matter, Article 6.13 is "necessary or expedient" to ensure that the Segregated Account's exit from rehabilitation is durable and permanent; without it the Rehabilitator cannot properly "protect the interests of insureds, creditors, and the public generally. . . ." Wis. Stat. §§ 645.33 and 645.01(4). Absent the assurance of Article 6.13, when the General Account is merged with the Segregated Account, and if the Rehabilitation itself were deemed a default

under AAC's General Account contracts, § 611.24 of the Wisconsin Insurance Code, which expressly permits the targeted rehabilitation of a segregated account, would be rendered ineffective and the successful conclusion of this rehabilitation case would be jeopardized. (*See* Barranco Aff. ¶ 9.) ("[I]f the General Account were not to be protected by Article 6.13, defaults could exist or be alleged to exist with respect to General Account contracts, resulting in many circumstances of control rights vesting in third parties, which is value-destructive and contrary to the Rehabilitator's durability assumptions.); *See also id.* at ¶10 ("Protecting AAC's contract rights (including control rights) from default declarations by counterparties and policyholders remains important as the Segregated Account anticipates exiting rehabilitation and being merged into AAC."). Barranco's Affidavit provides ample evidence to support the Rehabilitator's inclusion of Article 6.13. *See generally id*; *see also Koken v. Fid. Mut. Life Ins. Co.*, 803 A.2d 807, 812-817 (Pa. Commw. Ct. 2002) (holding that injunctive relief for claims against nondebtors was "necessary and proper" because allowing such suits to proceed would "affect[] directly and adversely what the liquidator is attempting to achieve through her proceedings.").

The alternative would be absurd – the Commissioner would have had to place the *entirety* of Ambac's policies into a rehabilitation proceeding, significantly expanding the impact on policyholders, merely to ensure that, upon exit, *all* alleged or even potential policy defaults could be deemed cured of any default resulting from the imposition of the proceeding (which was necessary to address policy-claims paying issues with respect to only a subset of the portfolio). The law never intended to favor form over substance in such a way. Article 6.13 is supported by relevant law and is necessary for the exit of the Segregated Account from this rehabilitation; the MHPI Objection to Article 6.13 should be overruled.

II. THE REHABILITATOR IS ENTITLED TO DISCRETION; *DE NOVO* REVIEW FOR EXITING REHABILITATION IS UNSUPPORTED AND MISPLACED

A. The Wisconsin Statutes And Precedent Grant the Commissioner Discretion.

Although the COFINA Bondholders have withdrawn their objection to the approval of the Second Amended Plan, and thus the argument that a *de novo* standard or review applies, the Rehabilitator wishes to address the issue to reassure the Court that the abuse of discretion standard is the proper standard of review to be applied by this Court in approving an exit from rehabilitation. Wisconsin Statutes and case law make it clear that the Rehabilitator is afforded discretion as an independent, appointed official with a duty to "administer and enforce" the Insurance Code and protect "insureds, creditors, and the public generally, with minimum interference with the normal prerogatives of proprietors. . . ." Wis. Stat. §§ 601.41(1) and 645.01(4); *see also* Wis. Stat. § 601.41(1)-(2) ("(1) Duties. The commissioner shall administer and enforce chs. 600 to 655 …. (2) Powers. The commissioner shall have all powers specifically granted to the commissioner, or reasonably implied in order to enable the commissioner to perform the duties imposed by sub. (1)."). The Court's role is to oversee administration, deferring to the Rehabilitator's discretion. *See id.* § 645.33(2), (5).[3] In the specific situation of an exit from rehabilitation, the role of the Court is to "find[] that rehabilitation has been accomplished and that grounds for rehabilitation . . . no longer exist." Wis. Stat. § 645.35(2). The legislature expressly instructed that Chapter 645 "shall not be interpreted to limit the powers

[3] "Subject to court approval, the rehabilitator may take the action he or she deems necessary or expedient to reform and revitalize the insurer. The rehabilitator shall have all the powers of the officers and managers, whose authority shall be suspended, except as they are redelegated by the rehabilitator. The rehabilitator shall have full power to direct and manage, to hire and discharge employees subject to any contract rights they may have, and to deal with the property and business of the insurer." Wis. Stat. § 645.33(2). "The rehabilitator may prepare a plan for the reorganization, consolidation, conversion, reinsurance, merger or other transformation of the insurer. Upon application of the rehabilitator for approval of the plan, and after such notice and hearing as the court prescribes, the court may either approve or disapprove the plan proposed, or may modify it and approve it as modified. If it is approved, the rehabilitator shall carry out the plan." Wis. Stat. § 645.33(5).

granted the commissioner." Wis. Stat. § 645.01(2). Were the Court to read *de novo* review into section 645.35(2), doing so would improperly abridge the rehabilitator's authority, in violation of the legislature's command.

The *Nickel* decision — the highest and most recent Wisconsin decision on point — evinces a considered ruling that, in the unique context of rehabilitation, this Court should extend deference to the rehabilitator's "interpretation and application of statutes [he] is charged with administering." 351 Wis. 2d 539, ¶ 20. Wisconsin courts "cannot rule . . . on the wisdom of an agency's decision" but should only determine whether the agency is empowered by statute to perform the function at hand. *Maple Leaf Farms, Inc. v. DNR*, 2001 WI App 170, ¶ 35, 247 Wis. 2d 96, 633 N.W.2d 720; *see also* Wis. Stat. § 227.57(8) ("[T]he court shall not substitute its judgment for that of the agency on an issue of discretion.").

With respect to confirmation of a plan, this Court has already found that the commissioner is to be afforded discretion, indicating that the Rehabilitator has "absolute discretion" which is a "very high threshold, pretty much a breach or a complete disregard . . . of one of the important competing interests. . . ." (3/29/16 Hrg. Tr. pp. 59-60.); *See also Nickel*, 351 Wis. 2d 539, ¶ 91 ("[I]t is axiomatic that the commissioner, in the reasonable exercise of the state's police power, may structure a rehabilitation plan that has the potential to adversely affect the interests of individual policyholders when the plan advances the broader interests of the policyholders, the creditors, and the public as a whole.") (citing *Am. Eagle Ins. Co. v. Wis. Ins. Sec. Fund*, 2005 WI App 177, ¶ 37, 286 Wis. 2d 689, 704 N.W.2d 44 (State may exercise the powers vested in it for the general good of the public even when doing so has the potential to impair contracts)); *see also* Wis. Stat. Ann. § 645.33(5).[4] The Court must only ensure "the

[4] "The rehabilitator may prepare a plan for the reorganization, consolidation, conversion, reinsurance, merger or other transformation of the insurer. Upon application of the rehabilitator for approval of the plan, and after such

commissioner appropriately exercised its discretion in formulating a plan" to pay claims in a way that is "fair and equitable" and "in the best interest of the policyholders." *Nickel*, 351 Wis. 2d 539, ¶ 28.

B. The Legislative History Of The Wisconsin Rehabilitation And Liquidation Statute Supports Discretion.

The introductory comments to the Wisconsin Rehabilitation and Liquidation Statute explain "[The Commissioner] should not wait to begin to do what is necessary to protect the public while efforts are made to find money." Wis. Stat. Ann. ch. 645, introductory cmts. The statute "leave[s] the commissioner considerable discretion to decide on direction depending on the specific facts of the individual case." Wis. Stat. Ann. ch. 645, subch. III, cmt. On Formal Proceedings. "This section is intended to permit, not require, an attempt to rehabilitate, and vests discretion in the commissioner to choose, subject to court control." *See* 1967 Wis. Laws ch. 89, cmt. on Wis. Stat. § 645.31(1). The legislative comments from section 645.32 indicate:

> This section is designed to make rehabilitation a very flexible procedure. It is essential that it be regarded as a management rather than as a legal task…The order is formulated to emphasize flexibility and informality and the rehabilitator is given broad powers. He must act under the supervision of the court, of course, but the court's control should be liberal, not strict, and should be provided without cumbersome procedures.

Wis. Stat. Ann. § 645.32 cmt. These comments make clear the intention of the Wisconsin Rehabilitation and Liquidation Statute to afford great deference to the Rehabilitator in making decisions with respect to the rehabilitation of an insurer.

C. The Cases Cited By The COFINA Bondholders Are Inapposite.

The cases cited by the COFINA Bondholders do nothing to support their bold assertion

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notice and hearing as the court prescribes, the court may either approve or disapprove the plan proposed, or may modify it and approve it as modified. If it is approved, the rehabilitator shall carry out the plan. In the case of a life insurer, the plan proposed may include the imposition of liens upon the equities of policyholders of the company, if all rights of shareholders are first relinquished. A plan for a life insurer may also propose imposition of a moratorium upon loan and cash surrender rights under policies, for such period and to such an extent as are necessary."

that the Rehabilitation Court should substitute its own *de novo* review in place of the discretion generally afforded to the Rehabilitator.[5] If true, requiring a *de novo* standard of review as part of an exit from rehabilitation would upend a cornerstone to OCI's administrative role in managing rehabilitation proceedings in Wisconsin.

The cases cited by the COFINA Bondholders are not on point; they involve disputes by insurance companies where liquidation was sought. What these cases reveal is that as between the only two real parties with standing in a delinquency proceeding, *i.e.,* the regulator/rehabilitator and the insurance company, when the regulator is about to place the company's property into liquidation—either by petitioning for liquidation or converting a rehabilitation to liquidation—the directors of the company have the right to an evidentiary hearing without having to overcome the regulator's discretion. *See, e.g., Angoff v. Cas. Indem. Exch.*, 963 S.W.2d 258, 263 (Mo. Ct. App. 1997) (petition to liquidate triggered company's right to a present evidence on existence of grounds, and upon company's proof of solvency, court was required to order return to company of its property and business)[6]; *LaVecchia v. HIP of New Jersey, Inc*., 324 N.J. Super. 85, 90-92 (N.J. Super. Ct. Ch. Div. 1999) (rejecting commissioner's argument that, under New Jersey liquidation statute, her determination to liquidate insurer must be affirmed "absent a finding that her determination to seek liquidation is unreasonable or arbitrary," while simultaneously accepting "that [the commissioner] has the discretion to decide

[5] The COFINA Bondholders attempt but fail to distinguish *Grode v. Mutual Fire, Marine & Inland Insurance Co*., 688 A.2d 233 (Pa. Commw. Ct. 1997). The court's entire decision was a comment on the events of the successful rehabilitation case. Solely with regard to the claims-settlement process, the court wrote the text that the COFINA Objectors quoted: "Though the process was time-consuming to the rehabilitator as well as to the Court, it ensured that policyholders and claimants received due consideration of their claims, an exceptionally important consideration in an insurance insolvency of this magnitude." *Id.* at 236. This Court conducted similar reviews of claims settlements and commutations by the Segregated Account. The *Grode* court premised its decision that termination of rehabilitation was appropriate by saying: "This summary is obviously inadequate to describe the enormity of this undertaking and the complexity of the entire rehabilitation." *Id.* at 236. Clearly, that court did not – as the COFINA Objectors claim – substitute the court's discretion and judgment for that of the rehabilitator.

[6] When it stated that the court was not merely a "rubber stamp", the *Angoff* court was referring to the company's right to prove the non-existence of grounds for liquidation. *See Angoff,* 963 S.W.2d at 263.

whether to accept or reject the [company's rehabilitation] plan and that her decision should not be interfered with unless it is shown to be arbitrary or unreasonable"); *Florida Dep't of Ins. v. Cypress Ins. Co.*, 660 So. 2d 1177, 1182-83 (Fla. Dist. Ct. App. 1995) (referring to the order to show cause process, which is required by Florida law before the regulator's liquidation petition may be granted, as a judicial proceeding in which "the fact finder and final decision-maker . . . functions . . . are the responsibility of the circuit court").

Wisconsin's provision on termination of rehabilitation, Wis. Stat. § 645.35(2), is preceded by a provision substantially identical to the provisions on which *Angoff*, *LaVecchia* and *Cypress* were based, which relate to the transformation to liquidation. *See* Wis. Stat. § 645.35(1). As in those states, if the Rehabilitator were seeking to end rehabilitation by petitioning to liquidate the Segregated Account, AAC would have the right to rebut the Rehabilitator's case. Of course, that is not the fact pattern before this Court, and none of the cases cited by the COFINA Bondholders suggest that the Rehabilitator's decision to move to terminate rehabilitation of the Segregated Account is subject to plenary review without deference.

Each of the cases cited by the COFINA Bondholders involved a dispute between the only two parties to the case—the state regulator, acting as rehabilitator, and the company - regarding whether the company should be deprived of its property and business, pursuant to state statutes that allow liquidation to be commenced upon an order directing the company to show cause by presenting evidence that grounds for liquidation do not exist. It is not surprising that when one party moves against the other party by Order to Show Cause to deprive that party of its interest in property that a plenary hearing with no presumption of deference is required. On our facts, the Rehabilitator is moving to return the Segregated Account to the possession and control of the insurance company. Obviously, on this point, there is no dispute between the parties in the case.

While the cases cited by the COFINA Bondholders make perfect sense in the context of an attempt by the regulator or the rehabilitator to liquidate an insurance company, the holdings in these cases shed no light in our case, where a non-party is complaining about a regulator's managerial decision because the non-party speculates that the decision might reduce its recovery on a claim that will arise 30 years hence.

D. Case Law From Other Jurisdictions Confirms the Rehabilitator's Position.

In a more recent case discussing the cases cited by the COFINA Bondholders, the "no deference" argument was rejected. *In re Penn Treaty Network Am. Ins. Co. in Rehab.*, 632 Pa. 272, 290, 119 A.3d 313 (2015) ("[J]udicial review of a statutory rehabilitator's decision to seek conversion under Section 518(a) generally is to be undertaken with due deference to the rehabilitator and is governed by an abuse-of-discretion standard."). This case completely undermines the use of a *de novo* standard of review here.[7]

In *Penn Treaty*, the commissioner filed petitions to convert the rehabilitations into liquidations. *Id.* at 283. The Commonwealth Court denied the petitions to liquidate and directed the commissioner to develop a plan of rehabilitation. *Id*. at 286. On appeal, the commissioner identified issues with the Commonwealth Court's no-deference approach. *Id.* at 287. The Supreme Court of Pennsylvania concluded that "judicial review of a statutory rehabilitator's decision to seek conversion under Section 518(a) generally is to be undertaken with due deference to the rehabilitator and is governed by an abuse-of-discretion standard." *Id.* at 290. The Court explained that generally judicial analysis should be limited to "whether the reasonable cause requirement of Section 518(a) was satisfied, again, with due regard for the

[7] Notably, the Pennsylvania statues are based on the Wisconsin statutes. *See, e.g., Koken v. Reliance Ins. Co*., 586 Pa. 269, 292, 893 A.2d 70, 84 (2006) (explaining that the Pennsylvania statute is based on the Wisconsin statute.)

Commissioner's expertise. . . ." *Id.* (explaining that the judicial review of the amended plan should be subject to a more deferential overlay).

Other cases have similarly recognized the propriety of a highly deferential review standard. *See, e.g., Kentucky Cent. Life Ins. Co. v. Stephens*, 897 S.W.2d 583, 588 (Ky. 1995) ("With the judgment of the Commissioner of Insurance being that liquidation was subsequently desirable and necessary, we determine that only a strong showing to the contrary would have justified the trial court's refusal to follow the recommendations of the administrative officers to whom the supervision of the insurance company was entrusted by the legislature."); *State ex rel. Flowers v. Universal Care of Tenn., Inc.*, No. M2006-00929-COA-R3-CV, 2007 Tenn. App. LEXIS 643, *14, 2007 WL 3072776, at *4 (Tenn. Ct. App. Oct. 22, 2007) (commenting that "[t]he General Assembly, not the courts, have entrusted the Commissioner with the independent judgment and discretionary power to seek liquidation of insurance companies within the statutory guidelines"); *Matter of Globe & Rutgers Fire In. Co.*, 148 Misc. 497, 266 N.Y.S. 29 (N.Y. Sup. Ct. 1933) ("The court has great confidence in [the] judgment [of the regulator] and recognizes that the recommendations and views of an administrative office charged with the performance of statutory duties, are entitled to great weight and careful consideration…."); *In re New York Title & Mortgage Co.*, 156 Misc. 186, 281 N.Y.S. 715, 725-36 (N.Y. Sup. Ct. 1935) ("Only the strongest showing to the contrary could justify the court's refusal to follow the recommendations of the administrative officer to whom the supervision of insurance companies has been intrusted [sic] by the Legislature."); *Foster v. Mut. Fire Marine & Inland Ins. Co.*, 531 Pa. 598, 609, 614 A.2d 1086, 1091 (1992) (explaining that "the involvement of the judicial process [in a rehabilitation] is limited to the safeguarding of the plan from any potential abuse of the Rehabilitator's discretion.")

CONCLUSION

For the foregoing reasons, the Rehabilitator respectfully requests that that the Court overrule the remaining objection and grant its Motion to approve the Second Amended Plan and enter the Confirmation Order to effectuate the Segregated Account's exit from Rehabilitation.

Dated at Milwaukee, Wisconsin this 29th day of December, 2017.

MICHAEL BEST & FRIEDRICH LLP

Electronically signed by John D. Finerty, Jr.
Ann Ustad Smith Bar No. 1003243
John D. Finerty, Jr. Bar No. 1018183
Justin M. Mertz Bar No. 1056938
Kimberly A. Streff Bar No. 1106358
100 E. Wisconsin Ave., Suite 3300
Milwaukee, Wisconsin 53202
Telephone: 414.271.6560
Facsimile: 414.277.0656
Email: jdfinerty@michaelbest.com

Attorneys for the Commissioner of Insurance of the State of Wisconsin, as the Court Appointed Rehabilitator of the Segregated Account of Ambac Assurance Corporation