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

CLOSING MEMORANDUM IN SUPPORT OF MHPI PROJECTS' OBJECTION TO THE REHABILITATOR'S PROPOSED SECOND AMENDED PLAN

Pursuant to this Court's statements on the record at the January 4, 2018 hearing (the "Hearing"), the MHPI Projects[1] submit the following memorandum in support of their objection 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").[2]

INTRODUCTION

Article 6.13 should not be approved by the Court for three key reasons. First, Article 6.13 improperly decides an affirmative defense raised by the MHPI Projects, which is whether an Ambac/Credit Enhancer Default has occurred. That issue is currently being litigated in the courts where litigation between Ambac and the MHPI Projects is pending (***litigation that Ambac initiated***) and thus usurps the jurisdiction of those courts, turns the notion of comity on its head, and represents plain post-factor forum shopping by Ambac as it hopes to avoid any further losses in the cases it filed against the MHPI Projects. Second, the Rehabilitator and its experts have conceded that Article 6.13 is not necessary for the durability of the Proposed Plan, removing any basis on which to assert that it needs to be included in what this Court approves. Third, Article 6.13 is not only unnecessary to the success of the Proposed Plan, it is motivated simply to take

[1] The "MHPI Projects" are thirteen public-private joint ventures between private developers and the United States Army, as identified in the MHPI Projects Objection. (Dkt. No. 1427, MHPI Obj., p. 1 n.1.)

[2] To the extent the Rehabilitator proposes a revised version of Article 6.13, or any revisions to the current version of Article 6.13, the MHPI Projects reserve their right to respond and object to that revised version on reply.

away a legal argument the MHPI Projects have asserted in seven other litigations without due process, as admitted by Ambac and the Rehabilitator's representative, and as further evidenced by the continued inability of Ambac to articulate any material financial impairment it may face as a result of its litigation with the MHPI Projects. Article 6.13 is neither "fair" nor "equitable" to the MHPI Projects and should be rejected.

BACKGROUND FACTS

The MHPI Projects are public-private joint ventures between private developers and the United States Army, which were formed to develop, construct, and maintain privatized military housing at Army bases across the country. These projects span 50 years. (Dkt. No. 1487, 1/4/18 Hr'g Tr., 62:22-24.) During that time, the MHPI Projects are required to upgrade and improve the military housing facilities that they construct in order to provide state-of-the-art housing to the Army, its members, and their families. (Id., 62:17-24; 63:2-20.) In order to accomplish these large-scale projects, each MHPI Project took out a loan (often hundreds of millions of dollars) and obtained "credit enhancement" (arranged for by the lender) from Ambac, generally in the form of a surety bond as well as bond insurance. The loan proceeds and revenues generated by the projects are reinvested back into the projects to support the construction and improvements. (Id., 63:3-20.) The MHPI Projects have never missed a bond or premium payment. (Id., 65:10-14; 215:5-7.) There is no evidence that the MHPI Projects are in danger of missing any payments or defaulting under the loans and, in fact, the MHPI Projects are in excellent financial condition. During this Rehabilitation, the MHPI Policies have always remained in the General Account, outside the scope of these proceedings. (Id., 195:12-25.)

In 2008, through no fault of the MHPI Projects, Ambac's credit rating plummeted. (See id., 217:12-23.) As a result, Ambac, as issuer of the surety bonds on the MHPI Projects' loans,

did not meet the credit rating requirements under the loan documents. In 2015, seeking to take advantage of its own financial failures, Ambac demanded that the MHPI Projects either replace the original surety bonds or in the alternative, cash fund Debt Service Reserve Funds ("DSRF") with more than $200 million, leaving hundreds of millions of dollars that should be used to construct and improve the military housing projects unavailable for decades. (See id., 75:15-25; 76:1-25; 77:1-14.) Ambac threatened to file suit if the MHPI Projects did not fund the DSRF within ten business days. In other words, Ambac threatened to sue the MHPI Projects based on alleged "control rights" that only went into effect because ***Ambac*** lost its credit rating in 2008.

Beginning in October 2015, Ambac initiated litigation against the MHPI Projects in various courts outside Wisconsin. (Id., Ex. 12.) Ambac first initiated litigation against the Fort Meade Project in Maryland federal court. The Fort Meade Project moved to dismiss that lawsuit for lack of subject matter jurisdiction and simultaneously filed a declaratory judgment action against Ambac in state court. (Id.) Ambac likewise filed suit against (again first in federal court but then later in state court) the MHPI Projects located in Kansas, Pennsylvania, Texas, and Virginia. (Id.) The MHPI Project located in Monterey, California filed a declaratory judgment action against Ambac after it received a similar demand to cash fund a DSRF. (Id.) In other words, ***Ambac*** initiated six of the seven pending actions involving the MHPI Projects.

These MHPI Project / Ambac cases have been pending for over two years, and the MHPI Projects and Ambac have engaged in substantial discovery, including the production and review of documents and depositions of key witnesses relating to the question of whether an Ambac Default occurred. The MHPI Projects resist 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.

During the discovery phase in the state court actions, the MHPI Projects learned that in or about September 2015, shortly before making the demand that the MHPI Projects cash fund the DSRF with more than $200 million, Ambac purchased approximately $73 million in D tranche military housing bonds from Freddie Mac. (Ex. A, AAC 2015 Annual Statement, Sch. D – Part 3, p. E13; Dkt. No. 1487, 219:14-23.) Ambac purchased the bonds at a substantial discount; at the time of the purchase, the bonds had a value of approximately $121 million. (Id.) This transaction was so large it had to go through Ambac's investment exception approval process and get approval from OCI. (Dkt. No. 1487, 56:11-25; 57:1-10.) It was only after Ambac bought over $73 million in military housing bonds relating to these and other Projects in 2015 that it demanded that the MHPI Projects cash fund and threatened suit. Ambac's motive was to increase the value of the bonds it purchased, to the detriment of the MHPI Projects and the military families they serve.

Ambac has been unsuccessful in the seven pending MHPI Project litigations. (Dkt. No. 1427, MHPI Obj., Exs. A and B); (Dkt. No. 1487, 228:14-22) ("Q. Is Ambac satisfied with the relief it is obtaining in the seven courts where there are or were cases pending? The Court: You mean like the two dismissals? Mr. Kravit: Exactly, sir. A. [Mr. Barranco] Are we satisfied? . . . Probably not."). Ambac lost two cases (Monterey and Meade) on summary judgment on statute of limitations grounds, and both cases are presently on appeal. (Id.) In two additional cases (Riley and Bliss), cross summary judgments are pending. (Dkt. No. 1487, Ex. 12.) The remaining three cases (Leavenworth, Lee and Carlisle) are still in discovery, but will likely proceed to summary judgment in the coming months. (Id.) In each case in which summary

judgment motions were filed, the parties briefed and argued the Ambac Default issue that the Rehabilitator now asks this Court to decide with Article 6.13 of the Second Amended Plan.

The MHPI Projects continue to pay Ambac hundreds of thousands of dollars annually in premiums. There is no evidence that the MHPI Projects are in danger of defaulting under the loan documents, or that Ambac will have to put forth any additional collateral or funding to support the loans. There is no evidence that Ambac will suffer any financial harm, even if the state courts in the pending actions decide in the MHPI Projects' favor. Even if Ambac had presented some evidence of harm, whether an Ambac Default occurred is an ultimate legal issue pending before seven courts around the country in lawsuits ***initiated by Ambac (with OCI's approval)*** concerning contractual provisions subject to the laws in those states. As this Court and even the Rehabilitator have made clear multiple times during this matter, 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.

ARGUMENT

I. ARTICLE 6.13 IS BEYOND THE SCOPE OF THIS PROCEEDING AND INTERFERES WITH SISTER COURTS' JURISDICTION.

As stated in the MHPI Projects' Objection, confirmation of Article 6.13 attempts to strip other courts of jurisdiction in pending litigation, which Ambac itself initiated with OCI's approval after the MHPI Projects did not comply with Ambac's demand that the MHPI Projects cash fund the DSRF with more than $200 million. Ambac is disappointed with the results thus far in the pending state court actions, so it is seeking to have this Court decide an ultimate legal issue which Ambac placed—but now appears to regret placing—before state courts in several other jurisdictions. This Court should not let itself be a party to such gamesmanship.

Article 6.13 is not a proper exercise of this Court's jurisdiction. The Rehabilitation "pertains ***solely to the Segregated Account*** . . . and ***does not pertain to*** . . . ***Ambac's General Account***."[3] (Dkt. No. 11, 3/24/10 Rehab. Order, ¶ 2.) (Emphasis added.) OCI intentionally employed a "surgical approach of rehabilitating only a segregated account of Ambac, as opposed to Ambac as a whole . . ." (Dkt. No. 1289, Clarification Order, ¶ 7.) OCI kept the MHPI Project policies in the General Account with full knowledge of the purported "control rights" in these policies. (Dkt. No. 1487, 188:2-12.) As confirmed at the Hearing, the MHPI Policies were never treated as though they were in the Segregated Account:

> [Mr. Kravit] Q. You agree, do you not, that the [MHPI Projects] policies are not in the segregated account?
>
> [Mr. McGettigan] A. That's correct.
>
> Q. And they were never treated as if they were in the segregated account, correct?
>
> A. That's correct.
>
> Q. It's only now at the closure of this proceeding with Rule 6.13 implemented where the rights of the policyholder MHPI would be affected, correct? Prior to entry of this order Ambac acted like MHPI was an ordinary policyholder and MHPI acted and responded to that litigation as if there were no restrictions from this rehabilitation, correct?
>
> A. That is correct.

(Id., 195:12-25.)

This is important because throughout the course of the Rehabilitation, this Court and the Rehabilitator have unequivocally stated that they would not interfere or exercise jurisdiction over the policies in the General Account. (Dkt. No. 1266, 7/15/16 Clarification Motion, ¶ 12 and n.6)

[3] The Rehabilitator now contends that this was an "***artificial distinction***." (Dkt. 1475, Rehab. Sur-Reply, p. 2.) (Emphasis added). This shocking statement is not only untrue, but it directly undermines nearly 8 years of proceedings where the General Account and Segregated Account were separated by design, and where the Rehabilitation and this Court's prior orders applied solely to the Segregated Account.

("[T]he 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***.") (emphasis added); (Id., ¶ 12) ("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***.") (emphasis added); (Dkt. No. 1281, 10/11/16 Hr'g Tr., 23:12-20) (The Court: "I'm not assuming any jurisdiction over any issue that involves Ambac[.]"); (Id., 23:21-23) (The Court: "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."); (Id., 24:10-18) (The Court: "[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 ordering them what to do.").

The Rehabilitator has repeatedly invoked the 2016 clarification proceedings in support of its motion, asserting that Article 6.13 is consistent with the 2016 Clarification Order. (Dkt. No. 1450, Rehab. Resp. Br., p. 34.) But the Clarification Order was clear: "***This Court does not seek to decide the merits of disputes involving the General Account that are pending in other courts***." (Dkt. No 1289, Clarification Order, p. 1.) (Emphasis added.) In affirming the Order, the Court of Appeals noted that it "expressly declines to address the ultimate legal question in controversy in other jurisdictions." (Dkt. No. 1472, MHPI Sur-Reply, Ex. B, ¶ 14.) As the Court of Appeals explained, the Clarification Order "did not make any finding or proffer any opinion as to" "whether the structure of the rehabilitation plan triggers any specific default language in a policy in the general account." (Id., ¶ 17.) In contrast, the Rehabilitator now asks this Court to make an affirmative ruling on the ultimate legal issue pending before sister courts in seven states

by deeming any default "cured and not to have occurred or existed, now, in the past, or in the future." (Sec. Am. Plan of Rehab., Art. 6.13.) Article 6.13 goes ***far beyond*** the findings in the Clarification Order and the reasoning of the Court of Appeals.

The over breadth of Article 6.13 makes the case law cited by Ambac and the Rehabilitator distinguishable. For example, in *Nickel*, the injunction at issue was affirmed in large part because there was "no evidence demonstrating that the intent of the commissioner is to 'escape actions and proceedings instituted against the insurer.'" 2013 WI App 129, ¶ 101, 351 Wis. 2d 539, 841 N.W.2d 482 (quoting Comment to Wis. Stat. § 645.34(1), 1967 Wis. Laws, ch. 89, § 17). But during the Hearing, both Ambac and the Rehabilitator made clear that Article 6.13 is expressly aimed at the MHPI Project litigation that was instituted ***by*** Ambac against the MHPI Projects. Furthermore, the injunction in *Nickel* was necessary to ensure "the success of the insurance rehabilitation" but both OCI and Ambac have conceded that Article 6.13 is not necessary for the durability of the Proposed Plan and thus is not necessary to ensure "the success of the insurance rehabilitation." *Id.*, ¶ 145. And *FGIC* is inapposite because as Ambac concedes, (Ambac Resp. to MHPI's Sur-Reply at 11), in that case, under New York law, there was no segregated account at issue, and thus the Court there had broader jurisdiction that this Court, whose jurisdiction is limited to the Segregated Account, not the General Account where the MHPI Projects' policies have always been. Similarly, the Rehabilitator's reliance on *Iserman v. MBL Life Assurance Corp.*, 231 Wis. 2d 136, 605 N.W.2d 210 (Ct. App. 1999), is misplaced because here, unlike in *Iserman*, the Rehabilitator has made an expression decision to limit its oversight and control to only the policies within the Segregated Account.

The Rehabilitator / Ambac would extend this Court's "exclusive jurisdiction" over any lawsuit in which Ambac (even General Account policies) is involved, because any recovery by

Ambac or judgment against Ambac could potentially impact its "claims paying resources." But that is not the law. Wisconsin statutory law is clear that the "exclusive jurisdiction" this Court has is only exclusive with respect to ***other Wisconsin courts***; the provision says ***nothing*** about jurisdiction related to an action in another state. *See* Wis. Stat. § Section 645.04(3). As discussed above, and in the MHPI Projects' Objection and Sur-Reply, prior orders from this Court and the Court of Appeals, including in the *Assured* decision, have drawn the sharp contrast between this Court's jurisdiction over matters related to the Segregated Account and those related to the General Account. This Court does not have exclusive jurisdiction over the MHPI Project policies, which are and always have been in the General Account.

Confirmation of Article 6.13 would violate settled principles of judicial comity under Wisconsin law. "[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) (emphasis added); *Frederickson v. Schaumburger*, 210 Wis. 127, 245 N.W. 206 (1932); *Orient Ins. Co. v. Sloan*, 70 Wis. 611, 36 N.W. 388 (1888)). "[I]nterference by one circuit court with the judgment and exercise of power by another circuit court cannot be approved." *In Interest of Tiffany W.*, 192 Wis. 2d 407, 423, 532 N.W.2d 135 (Ct. App. 1995) (quoting *Kusick v. Kusick*, 243 Wis. 135, 138, 9 N.W.2d 607 (1943)). *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.").[4]

At the Hearing, the Court acknowledged the fundamental unfairness of Article 6.13 and further that Article 6.13, rather than promoting comity, may have the opposite effect and could unnecessarily intrude upon the jurisdictional province of the seven pending MHPI Project litigations. (Dkt. No. 1487, 93:15-94:1) (The Court: "But are we stretching comity if we -- when we have these pending actions that were initiated by Ambac which raised affirmative defenses of loss of control rights due to default, I all of a sudden bring those back here where they may very well and probably do belong, are we stretching the bonds of comity or boundaries of comity that these other courts may say, well, you know, we've reached a point where, you know, Wisconsin as a sister state is due comity but this has deprived [the MHPI Projects] of a forum that was chosen by Ambac to resolve the dispute."). Ambac, with approval from the Rehabilitator and OCI, filed lawsuits around the country starting in late 2015, affirmatively invoking the jurisdiction of those respective state courts in seeking to enforce the financial contracts between Ambac and the MHPI Projects, which is only possible if an Ambac Default has not occurred. (Id., 58:7-25; 59:1-15.) ***Ambac*** has submitted that ultimate legal question of whether an Ambac Default exists under the contract laws of those respective states to those courts, and it did so

[4] Furthermore, Article 6.13 is likely not subject to full faith and credit (an issue which cannot be decided by this Court at this time but instead must be decided by the state courts where the MHPI Project cases are pending) because, among other things, while this Court has granted the MHPI Projects limited standing to object to the Proposed Plan, the MHPI Projects have not been able to fully present evidence and there is not full identity between the causes of action, persons and parties between the two cases. *See, e.g. Adamson v. Hill*, 202 Kan. 482, 487 (1969). As policyholders in the General Account, this Court not only does not have jurisdiction over the MHPI Projects' policies, but has expressly refused such jurisdiction, both in the original rehabilitation order as well as the later Clarification Order. (See, e.g., Dkt. No. 11, 3/24/10 Rehab. Order, ¶ 2; Dkt. No 1289, Clarification Order, p. 1.) The Supreme Court has made clear (in authority cited by Ambac) that Full Faith and Credit does not need to be given where the court issuing the original decree was without jurisdiction. *Underwriters Nat'l Assurance Co. v. N.C. Life & Accident & Health Ins. Guar. Ass'n*, 455 U.S. 691, 705 (1982) ("[B]efore a court is bound by the judgment rendered in another State, it may inquire into the jurisdictional basis of the foreign court's decree. If that court did not have jurisdiction over the subject matter or the relevant parties, full faith and credit need not be given.").

before the Rehabilitator sought clarification on the purpose of the Rehabilitation in July 2016. Because this is the exact legal issue pending before other state courts, Article 6.13 "stretches the . . . boundaries of comity" beyond what the law allows.

Indeed, Article 6.13 intentionally deprives the MHPI Projects' rights to due process, seeking to have this Court decide a legal issue pending in multiple lawsuits initiated by Ambac without the benefit of the discovery, experts, motions, and adversary proceedings available to the parties in those pending state cases. (Dkt. No. 1427, p. 11-14.) The Wisconsin Constitution provides for a guarantee of due process and the protection of redress and remedies for injuries. *See* Wis. Const. art. I, §§ 1, 9. The wholesale removal of a remedy is expressly 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[.]").

Here, the Rehabilitator and Ambac ***admittedly*** intend to deprive the MHPI Projects of any remedy for an Ambac Default. (Dkt. No. 1487, 71:7-16) ("Q. So you are taking away the defense that Ambac failed by 6.13 unilaterally without any litigation in those seven courts; am I right? Your plan take that away; yes? A. That would be the end result from the Rehabilitator wanting 6.13 to make sure that the merged account . . . is free of – cured of any defaults and retains its claims-paying ability for all claimants, including MHPI."); (Id., 160:5-9) ("Q. What's your understanding of what Section 6.13 of the plan attempt to accomplish? A. It attempts to wipe the slate clean, if you will, and provide a fresh start for the merged entity following consummation of the transaction."); (Id., 185:2-5) ("Q. So in effect, by instituting 6.13 this Court will be deciding seven cases where Ambac has put this very issue in dispute elsewhere, correct? A. That is certainly the request of the Court."). Pursuant to proposed Article 6.13, any party injured by an undisputed occurrence of an Ambac Default could have no legal remedy because the Ambac

Default "never occurred." Because Article 6.13 denies the MHPI Projects' due process required under the law, *see* U.S. Const. amend. XIV, § 1; Wis. Const. art. I, § 1, it must be stricken from the Proposed Plan.

II. ARTICLE 6.13 IS NOT NECESSARY.

A. Article 6.13 Is Not Required For A Durable Exit From Rehabilitation.

Even if Article 6.13 is not improper on its face—and it is—inclusion of Article 6.13 in the Proposed Plan is not necessary. At the Hearing, the Rehabilitator and its witnesses made it clear that the Proposed Plan is "durable" without Article 6.13. (Id., 84:3-4) ("Q. Is the plan you're proposing durable without 6.13? [Mr. Schwartzer] A. My understanding is it is."); (Id., 100:16-24) ("Q. The existence of that term sheet doesn't change your testimony that if 6.13 is not in the final plan, it will close anyway, it will be sufficient or sustained or…durable? A. Yes. Q. Is that right? A. It would be durable."); (Id., 186:6-10) ("Q. Let's talk about durability. If one point -- I'm sorry, 6.13 is out of this agreement, just that provision, is the plan that you're approving still durable? [Mr. McGettigan] A. Yes.").

This means, even without Article 6.13, Ambac "can meet its obligations, pay its claims, 100 cents on the dollar on a go-forward basis, and that there is even a cushion even beyond that . . . that there's some margin of safety that's left even after all claims are paid in case [the OCI's] estimates are off or in case unforeseen events occurred." (Id., 28:4-13.) (See also id., 120:19-23) ([Mr. McGettigan] "A. My opinion is subsequent to the transaction – or upon consummation of the transaction Ambac will be able to pay all claims in full in case on a timely basis across the relevant range of scenarios with an acceptable margin of safety."). This is true even under a "worst-case scenario, stress case." (Id., 28:15-22.) In fact, the margin of safety has improved over the last month, and it will continue to improve as Ambac takes advantage of other "derisking opportunities." (Id., 176:14-17; 177:3-6, 17-23.)

When asked by the Court whether 6.13 is a "deal-breaker" the Special Deputy Commissioner of OCI was unequivocal, Article 6.13 is ***not*** necessary in order for the Segregated Account to exit Rehabilitation:

> By the Court: Q. Mr. Schwartzer, is it a deal-break if I don't approve 6.13 but approve everything else? I mean, is there a contract among the consensual parties that if the judge approves everything but this, we're going to renegotiate the entire deal?
>
> A. No. That's not the case on the parties. My interest, as I said, is strictly not just this rehabilitation but future rehabilitations. Yes.
>
> …
>
> Q. Is there a way to do that in a manner that accommodates the interests of the Military Housing Projects since it doesn't appear that losing this litigation, if you were to lose it -- I don't think there really is a default here. But if you were going to lose it, it doesn't appear that it's going to adversely affect the durability of this exit?
>
> ***A. Not of this exit. That's absolutely correct, sir.***

(Id., 90:2-23.) (Emphasis added.)

The Special Deputy Commissioner also testified that no other signatories to the Proposed Plan have indicated that Article 6.13 is necessary (or even relevant) for their assent to the Proposed Plan. (Id., 101:11-22) ("The Court: . . . Has anybody who was signatory to the RESA indicated that if 6.13 is not included in the ultimate second amended plan that's approved by this Court, that they are not going to sign off? A. No one has indicated to me. The Court: You would expect that would come up, wouldn't you? A. I would expect that to come up as COFINA wanted a delay. There was certainly discussions of that as well, but I wasn't involved in those discussions."); (Id., 186:1-15) ("Q. [H]as anyone ever told you that if 6.13 is out of this plan, that the closing will not take place, that the plan will be delayed in any way, that anyone will pull out of the plan? [Mr. McGettigan] A. I've not had any of those discussions.")

Instead of a necessary step to ensure Ambac's return to financial health, Article 6.13 is a punitive provision that singles out the MHPI Projects (who have always remained in the General Account) for disparate treatment. (Id., 70:16-23) ("[Mr. Schwartzer] A. I agree that 6.13 cures all defaults would include anything that MHPI might move forward on."); (Id., 71:7-12) ("Q. So you are taking away the defense that Ambac failed by 6.13 unilaterally without any litigation in those seven courts; am I right? Your plan takes that away; yes? ("[Mr. Schwartzer] A. That would be the end result from the Rehabilitator wanting 6.13 . . ."); (Id., 185:2-5) ("Q. So in effect, by instituting 6.13 this Court will be deciding seven cases where Ambac has put this very issue in dispute elsewhere, correct? [Mr. McGettigan] A. That is certainly the request of the Court."); (Id., 92:8-16) ("[The Court] Q. So this is, in particular for this particular exit, it's limited to the Military Housing Project interest, and there doesn't appear to be anything on the horizon with respect to any other interested party in terms of a threat to the control rights of Ambac? [Mr. Schwartzer] A. That's my understanding, that there are no additional ones. That there's this one and we're trying to protect against it.").

From its opening brief in support of its motion to amend the plan, the Rehabilitator has made it clear that it seeks to directly "eliminate the legal dispute" over an Ambac Default. (Dkt. No. 1372, Rehab. Br., p. 27.) At the Hearing, this Court recognized that the purpose of 6.13 is to target the legal arguments posed in the state court cases around the country. (Id., 196:1-14) ("[Mr. Kravit] Q. But by this order that Ambac seeks, Ambac seeks to directly resolve and interfere in that litigation, do you agree? [Mr. McGettigan] A. I don't agree. I think that might be an effect, but I don't know if it was drafted with that specific purpose in mind . . . The COURT: ***What other purpose would there be?***"). Such disparate treatment, wholly unnecessary and unrelated to Ambac's continued solvency and financial health once the Rehabilitation is

concluded, should not be sanctioned by the Court. *See* Wis. Stat. § 645.01(4) ("The purpose of [Chapter 645] is the protection of the interests of insureds, creditors, and the public generally, with ***minimum interference*** with the normal prerogatives of proprietors . . ."") (emphasis added); Wis. Stat. § 645.33(2) ("Subject to court approval, the rehabilitator may take the action he or she deems ***necessary or expedient*** to reform and revitalize the insurer.") (emphasis added). Article 6.13 should be stricken from the Proposed Plan.

B. Neither Ambac Nor The Rehabilitator Can Justify Article 6.13 Based Upon Any Potential Harm To Ambac.

Testimony at the Hearing reiterated once again that the MHPI Projects' policies are the only ones containing the specific Ambac Default language at issue, and thus, there is no risk of collateral damage or a "domino effect" with regard to a default. (Dkt. No. 1487, 72:23-73:5) ("Q. Is there any other policy that you know of, segregated or not segregated, where there is an issue as to whether Ambac is downgrade -- been downgraded, and therefore, something -- there's controversy about it? [Mr. Schwartzer] A. Not to my knowledge. That's one of the reasons why we wanted to have the language in. But not to my knowledge."); (Id., 91: 17-19) ("[The Court] Q. Is there any danger of other defaults other than the Military Housing Project, Inc. [sic] claim? A. Not to my knowledge."). There can be little to no fear of collateral damage if Article 6.13 is not included in the Proposed Plan.

As noted by the MHPI Projects previously, and confirmed at the Hearing, Ambac has offered ***no evidence*** of any monetary harm caused by a finding of Ambac Default. When asked for any harm that could result, the Rehabilitator could only speculate. (Id., 79:16-25) ("Q. Is there any money damage to Ambac if MHPI wins is cases? What's the damage? [Mr. Schwartzer] A. We've had several discussions. My understanding from both the company and from our own experts is that it's difficult to quantify."); (Id., 80:3-10) ("[Mr. Schwartzer] A.

Again, just to be very frank and honest, the discussions I've had with our financial advisers, the discussions I've had with Ambac is it is very difficult to quantify the loss of control rights from a monetary perspective . . . So, no, I was never given a specific number or a specific range of what might be a loss of claims-paying resources."); (Id., 81:6-14) ("Q. So the answer is that Ambac's -- what Ambac is protecting in a matter of dollars is speculative. You don't know. Right? [Mr. Schwartzer] A. I do not know. Q. And all the reports we've read that have been filed here, including the old affidavits, none of them put a dollar amount on what is to be protected by the 6.13. Do you agree? A. I would agree.").

Ambac has confirmed in the pending state court matters that it has not conducted any analysis of the monetary damage to Ambac if there is an Ambac Default. (Dkt. No. 1472, MHPI Sur-Reply, Ex. I, 93:6-10) ("Q. My question is a little bit different. Have you ever done an analysis of the damage to Ambac potentially if there was a (c)(i) or (c)(ii) default? A. No."). Similarly, the Rehabilitator's expert did not even consider the possibly monetary effects on his financial model if Article 6.13 is removed from the Second Amended Plan. (Dkt. No. 1487, 170:14-17.) And there is no greater risk of an MHPI Project default today than there was the day Ambac and the MHPI Projects entered into the underlying loan documents. (Id., 67:9-12.) Ambac should not be allowed to have it both ways, claiming that Article 6.13 is necessary to protect "claims-paying resources," while failing to offer any evidence that eliminating Article 6.13 would actually cause it harm.

David Barranco, Ambac's Senior Managing Director and Head of Risk Management, submitted an affidavit and testified at the Hearing related to the purported effects of losing "control rights" in insurance policies. (Id., 210:20-211:6 and Ex. 10.) Mr. Barranco admitted that he cannot quantify the alleged harm of an Ambac Default, or any control rights for that matter.

(Id., 204:19-25) (Mr. Barranco: "***You can't say how much they're worth***. I look to the historical precedent and think about those example I just gave and think about – there's no reason to believe that that [*sic*] – they won't be as equally as valuable going forward. But you're correct. ***You can't put an exact dollar on them***.") (emphasis added); (Id., 231:18-21) ("Q. But no loss that you can quantify today. Zero. [Mr. Barranco] A. There's no loss that I can say specifically what it's going to be based upon that."). And while Mr. Barranco provided past examples of Ambac exercising its control rights (Id., 203:7-13; 204:1-8), and testified further about the importance of Ambac's control rights with regard to its role insuring student loans and Puerto Rico's bonds (Id., 211:7-22), he did ***not*** testify that ***any*** of those policies contained the same language as the MHPI Projects policies, or that Ambac was at risk of a similar default argument in any of those litigations.

Beyond hypothetical consequences of losing control rights generally, Mr. Barranco could not identify any specific harm to Ambac as a result of a finding of Ambac Default in the MHPI Projects cases, let alone a specific harm from excluding Article 6.13. There is no basis anywhere in the record to conclude that there is any threat to Ambac if this Court rejects Article 6.13. Over nearly eight years, with thousands of policies in the General Account, apparently only the MHPI Projects have raised this issue. Put simply, the fact that Ambac *wants* to keep all of its control rights (including over the MHPI Projects) does not expand this Court's jurisdiction, expand the scope of the Rehabilitation proceedings, or show any actual harm to Ambac if Article 6.13 from the Proposed Plan.

III. IF THIS COURT CONFIRMS A VERSION OF ARTICLE 6.13, IT SHOULD EXCLUDE THE MHPI PROJECTS.

As stated on the record at the Hearing, the MHPI Projects will not oppose and would withdraw their objections to Article 6.13 if the MHPI Projects and their ***pending*** litigation

against Ambac were exempted from Article 6.13's impermissibly broad reach.[5] (Dkt. No. 1487, 93:7-9.) Indeed, if the Rehabilitator's purpose of including Article 6.13 is to protect the State's interests in future, unknown, rehabilitations (Id., 90:11-15), then it would make sense to exempt pending litigation like MHPI Projects. This is because, as the Court acknowledged, Article 6.13's purpose is at present "limited to the Military Housing Project interest, and there doesn't appear to be anything on the horizon with respect to any other interested party in terms of a threat to the control rights of Ambac." (Id., 92:9-13.) The Special Deputy Commissioner agreed. (Id., 92:14-16) ("That's my understanding, that there are no additional ones. That there's this one and we're trying to protect against it."); (Id., 91:17-19) (The Court: "Q. Is there any danger of other defaults other than the Military Housing Project, Inc. [sic], claim? A. Not to my knowledge."). Adopting a version of Article 6.13 that excludes the MHPI Projects also addresses Ambac's purported concern that other policyholders may attempt to assert an Ambac Default to gain some advantage in future litigation. Any such defaults (to the extent they exist) would be covered by the Proposed Plan. The Rehabilitator and Ambac's refusal to agree to such an exemption is indicative of Article 6.13's punitive purpose towards the MHPI Projects.

IV. THE MHPI PROJECTS ARE INTERESTED PARTIES.

Despite Ambac's continued protestations to the contrary, the MHPI Projects have standing to object, as policyholders, to the inclusion of Article 6.13 in the Proposed Plan. First, pursuant to statute, "'Policyholder' means the person who controls the policy by ownership, ***payment of premiums*** or otherwise." Wis. Stat. § 600.03(37) (emphasis added). The MHPI Projects purchased credit enhancement from Ambac, in part in the form of the bond insurance, which they each continue to pay premiums for to this day. (Dkt. No. 1487, 89:1-5.) Second,

[5] The MHPI Projects propose the revised language set forth in Exhibit C hereto.

allowing the MHPI Projects to object is necessary in order to protect their obvious interests at stake if Article 6.13 were to be confirmed. There is no other party protecting the MHPI Projects' interests in the Rehabilitation. Article 6.13 was written specifically with the MHPI Projects in mind and meant to decide issues pending before other courts in litigation initiated by Ambac. If Ambac prevails in that litigation, it is the MHPI Projects who will be required to spend over $200 million to fund DSRF, for the sole benefit of Ambac. The fundamental unfairness of Article 6.13 is only further highlighted by Ambac's continued opposition to even allowing the MHPI Projects' objections to be heard before this Court.

CONCLUSION

For the foregoing reasons, the MHPI Projects object to approval of the Second Amended Plan to the extent it includes Article 6.13 as written, and respectfully request the Court approve the Second Amended Plan without Article 6.13, or in the alternative, exempt the MHPI Projects from its scope.

Dated this 16th day of January, 2018.

KRAVIT, HOVEL & KRAWCZYK S.C.

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