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

OBJECTION OF ONE STATE STREET LLC TO MOTION FOR CONFIRMATION OF THE PLAN OF REHABILITATION

Dated: November 8, 2010

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One State Street LLC ("One State Street"), which is the landlord for the world headquarters of Ambac, located in New York City, hereby objects to the Rehabilitator's Motion for Confirmation of Plan of Reorganization, dated October 8, 2010 (the "Confirmation Motion"), which seeks confirmation of the Plan of Rehabilitation of the same date (the "Plan").[1] Both Ambac Assurance Corporation ("AAC") and its parent company, Ambac Financial Group, Inc. ("AFG"), are party to the Headquarters Lease (as defined below) and both AAC and AFG have liability and obligations thereunder. Ambac and the Office of the Commissioner of Insurance ("OCI") purported to place AAC's liability on the Headquarters Lease into the Segregated Account while at the same time leaving all other ordinary operating liabilities in the so-called general account of AAC. The Rehabilitator now seeks to confirm a plan of rehabilitation that, read literally, would essentially take away all recovery of One State Street from: AAC's general account, the Segregated Account, and even AFG, an entity that is not even within the jurisdiction of this Court, OCI, or the Rehabilitator. The Rehabilitator requests confirmation of the Plan without any meaningful review by this Court or parties in interest with little more than the repeated mantra that discretion is provided to the Rehabilitator under the statute. No amount of discretion, however, excuses the Plan's failure to meet minimum legal requirements: the constitutional requirements established more than seventy years ago by the United States Supreme Court and the plain text of the Wisconsin statutes.

FACTUAL BACKGROUND

The facts are simple. The lease in question was originally entered into in 1992 between South Ferry Building Company (the predecessor-in-interest of One State Street) and Ambac Insurance Company (the prior name of AAC) (the "Headquarters Lease"). In 2000, AAC

[1] Capitalized terms defined in the Plan and not otherwise defined herein are used as defined in the Plan.

assigned the Headquarters Lease to its parent company, AFG. Pursuant to the terms of the Headquarters Lease, AAC remains a primary obligor and will be responsible for damages and payments due. Additionally, should AFG file for bankruptcy and reject its obligations under the lease, the likelihood of which is increasing by the day, AAC is obligated to sign a new lease on comparable terms. Notwithstanding the assignment of the Headquarters Lease to AFG, AAC continues to operate its business from the leased premises.

Nevertheless, OCI and the Rehabilitator have tried to devise a plan of rehabilitation that would effectively foreclose One State Street from any possibility of recovery against *both* AAC and AFG. With respect to AAC, the Plan proposes to satisfy One State Street's claim with a junior surplus note from the Segregated Account. The terms of the junior surplus note, however, reveals that the "note" to be provided to One State Street is of no substance. The junior surplus note expressly provides that it is subordinated to all existing *or future* surplus notes, indebtedness, obligations, policy claims, and all other claims of any kind. Thus OCI proposes to effectively provide no recovery to One State Street from AAC. To make matters worse, the Rehabilitator then gratuitously tries to foreclose any claim by One State Street against AFG, an entity not before this Court or within the jurisdiction of this Court, OCI, or the Rehabilitator, by virtue of incredibly broad third-party releases that no insolvency court could approve and no precedent supports.

ARGUMENT

Although OCI and the Rehabilitator dispute any liability of AAC under the Headquarters Lease, they are not proposing to resolve these New-York-law-specific disputes prior to confirmation. They instead seek to eviscerate One State Street's rights via the Plan. However, the Plan must provide One State Street with its constitutionally and statutorily mandated recovery if and when AAC's liability under the Headquarters Lease is established under New

York law. The Plan, however, fundamentally fails to meet even the minimum standards for confirmation.

I. THE REHABILITATION PLAN CANNOT BE CONFIRMED BECAUSE IT FAILS TO PROVIDE ONE STATE STREET WITH THE VALUE THAT WOULD BE OBTAINED IN A LIQUIDATION.

In a blatant attempt to avoid any meaningful review of the Plan, the Rehabilitator takes the remarkable position that claims in rehabilitation do not need to receive at least the same value as in liquidation. Rehabilitator's Brief at 14-15. Indeed, the Rehabilitator asserts that a parade of horribles would occur if there were any meaningful analysis of the Plan, including any comparison to the treatment of claims in liquidation. Whatever discretion the Rehabilitator might have, however, there is a floor below which a rehabilitation plan gives unconstitutional treatment. That is what is currently being proposed for class 5 claimants, such as One State Street.

A. Due Process and the Contracts Clause Requires That Claimants Fare At Least As Well In Rehabilitation As In Liquidation.

The Supreme Court has held that due process and the Contracts Clause of the United States Constitution require that all claimants in an insurance rehabilitation be provided at least the same rights and value for their claims as they would have received in a liquidation. *Neblett v. Carpenter*, 305 U.S. 297, 305 (1938). The rule of *Carpenter* is black letter law – all plans of rehabilitation must provide claimants with, at a minimum, the value that would be received in a liquidation. Other courts have expressly acknowledged the applicability of *Carpenter* to all plans of rehabilitation. *See, e.g., Foster v. Mutual Fire, Marine & Inland Ins. Co.*, 614 A.2d 1086, 1096 (Pa. 1992) ("[T]he creditors herein, at a minimum, will fare at least as well under the rehabilitation as they would in a liquidation proceeding as mandated by the holding of *Neblett*."). Indeed, COUCH ON INSURANCE, a leading treatise which the Rehabilitator cites to for numerous

black-letter law principles, expressly states that *Carpenter* requires all plans of rehabilitation to provide creditors with their liquidation value. 1 COUCH ON INSURANCE § 5:29 (3d ed. 2010) (stating that, in plans of rehabilitation, "[a]ll that the law requires is that the creditor or policyholder receive the liquidated value of his contract rights without any unreasonable delay") (citing *Carpenter*). Similarly, the due process clause of the Wisconsin Constitution also mandates the liquidation value as the minimum recovery to creditors.

In an attempt to avoid the clear applicability of *Carpenter*, the Rehabilitator makes two preposterous arguments. First, the Rehabilitator points to the absence in the Wisconsin Statutes of an express statutory requirement, adopted in a minority of states, that rehabilitation plans provide claims with no less favorable treatment than in liquidation. Rehabilitator Brief at 15. However, it cannot be that the absence of a statutory provision precludes the applicability of protections afforded by the United States and Wisconsin Constitutions. Due process and the Contracts Clause trump any statutory provision (or, in the case of the Rehabilitator's incredibly thin argument, the absence of a statutory provision).

Second, the Rehabilitator suggests, in a footnote, that somehow a minor alteration to the facts in *Carpenter* would make the holding inapplicable to any other plan of rehabilitation. *Id.* at 14 n.3. Again, there is no way "around" *Carpenter*'s requirements; *Carpenter* sets the clear baseline. The issue is whether this Plan factually meets the test. It does not. Tellingly, OCI and the Rehabilitator do not (because they cannot) assert that the Plan satisfies the standard of *Carpenter* with respect to One State Street's claim.

B. The Plan, On Its Face, Fails To Provide One State Street With Its Liquidation Value.

To be clear, the only non-policy liabilities of Ambac that were cherry picked for allocation to the Segregated Account were the "contingent disputed liability" of AAC under two

office leases, the primary one being the Headquarters Lease. As a result, One State Street is, as of the purported allocation to the Segregated Account, the only claim of its type in this proceeding.

There is in fact no dispute that the Plan provides One State Street with less than it would receive in a liquidation. In this case, the Court does not need to look any further than the Rehabilitator's own statements to determine that One State Street is not receiving its liquidation value. Notably, at the hearing this Court held on September 9, 2010, counsel for the Rehabilitator represented to the Court:

> I submit that there would be one and only one beneficiary had OCI chosen liquidation . . . and who would that one party be? It would be the shareholders of Ambac because it would create a tremendous value for them. . .

Sept. 9, 2010 Hearing Transcript at 77:4-9. This translates to a clear statement of full recovery to a creditor like One State Street in a liquidation because, in any liquidation, shareholders are only entitled to value after all other creditor claims are paid in full. WIS. STAT. § 645.68. In other words, One State Street would receive a 100% recovery in a liquidation. As OCI noted at the hearing, many policy claims are eliminated under the statute in a liquidation. And while that means that rehabilitation may generally be better for policy holders and reinsurance counterparties, it is not for the few ordinary, operating creditors such as the landlord. This results from the unique status of One State Street as a non-policy creditor and OCI's allocation of this liability to the Segregated Account, the only non-policy liability so allocated.

In direct contrast, the Disclosure Statement of OCI expressly states that class 5 creditors, such as One State Street, will receive far less than full recovery. Specifically, the Disclosure Statement provides four scenarios of potential recoveries for General Claims, defined to include class 5 claims, which includes One State Street, over the next ten years. Disclosure Statement at

66-68. In only one of the four scenarios is it projected that General Claims would recover anything at all. And even in that fourth scenario, the supposed recovery ten years into the future is illusory. The form of Junior Surplus Note, the only recovery for General Claims, expressly provides that the Junior Surplus Notes are subordinated to all existing or future indebtedness obligations, or claims of any kind. Thus, *future* claims and obligations, which are completely not ascertainable and subject to the whim of the Rehabilitator, are not even factored into this purported recovery scenario. Further, in the remaining three scenarios, the Rehabilitator expressly admits that One State Street would be provided no recovery.

The Rehabilitator's own scenarios represented in the Disclosure Statement stand in contrast to the arguments made by OCI in response to One State Street's prior motion to dissolve the temporary injunction issued by this Court on March 24, 2010. At that time, OCI argued that the allocation of liability under the Headquarters Lease to the Segregated Account was justified because of the secured note and reinsurance agreement that were designed to effectively backstop obligations of the Segregated Account. Now, however, the Rehabilitator seeks to relegate One State Street to the very back of the line with respect to such backstop obligations, and, even worse, proposes a Plan where the Rehabilitator can place future, not-yet-incurred obligations (which would not be incurred in a liquidation) ahead of a recovery by One State Street.

The admitted recovery to shareholders in a liquidation scenario, which implies full recovery to general creditors, leads to the unavoidable conclusion that the provision of less than full recovery to One State Street in the Plan violates the Supreme Court's mandate in *Carpenter*. To the extent that the Rehabilitator attempts to argue at confirmation that shareholders would not receive any recovery in liquidation, the Rehabilitator is judicially stopped from taking such a

position in direct contradiction to the position stated on the record at the September 9, 2010 hearing. *See Mrozek v. Intra Financial Corp.*, 699 N.W.2d 54, 65 (Wis. 2005) ("Judicial estoppel precludes a party from asserting one position in a legal proceeding and then subsequently asserting an inconsistent position.").

II. THE REHABILITATION PLAN VIOLATES THE PRIORITY SCHEME OF SECTION 645.68 OF THE WISCONSIN STATUTES.

In addition to providing less recovery to class 5 claims than in liquidation, the Plan also proposes to override the priority waterfall set forth in the Wisconsin Statutes. The Rehabilitator expressly acknowledges the applicability of the order of priority set forth in section 645.68 of the Wisconsin statutes to rehabilitation, and summarily asserts that the Plan honors the statutory priorities. *See* Rehabilitator Brief at 18-19. What the Rehabilitator states, and what the Plan actually provides, however, are incongruous.

Section 645.68 of the Wisconsin statutes provides a clear, mandated priority scheme by identifying eleven possible classes of claims in order of priority. The Plan largely tracks the priority statute with respect to administrative claims, which are afforded first priority and are to be paid in cash, and with respect to policy claims, which are afforded second priority and are to be paid in a combination of cash and priority surplus notes. *See* WIS. STAT. §§ 645.68(1), (3). The Plan, however, completely departs from the priority statute with respect to all claims other than administrative and policy claims.

Any claim of One State Street would be classified under the statute as a class 5 claim. *See* WIS. STAT. §§ 645.68(5) (defining class 5 as all claims not falling within other classes). Pursuant to the statute, each of the claims that would fall within the statutorily mandated classes 6 through 11 are junior in priority to class 5 claims. WIS. STAT. §§ 645.68 ("[E]very claim in each class shall be paid in full or adequate funds retained for the payment before the members of

the next class receive any payment."). The Plan, however, impermissibly classifies all claims in classes 5 through 11 as the same class, called "General Claims." Plan § 1.28 (defining General Claims as "[a]ll Claims which are not Administrative Claims or Policy Claims, and are not otherwise entitled to priority under the Act or an order of the Court"). As a result, the Plan contemplates that all claims junior to class 5 claims will be treated *pari passu* with class 5 claims. The statute expressly forbids such a result by mandating that class 5 claims be paid in full prior to any recovery to classes 6 through 11.

III. THERE IS NO BASIS OR JURISDICTION TO PROVIDE THE PROPOSED INJUNCTION, RELEASES, AND IMMUNITIES FOR THE BENEFIT OF THIRD PARTIES.

As set forth at length above, One State Street asserts that both AFG and AAC are liable under the Headquarters Lease. OCI and the Rehabilitator have taken the position that AAC has no liability under the lease, and that the only party to the lease is AFG. This dispute, which is a matter of detailed New York law and based on facts that occurred in lease negotiations in New York, need not be resolved at plan confirmation (or even need be resolved in this Court). Instead, the Plan must simply provide any claim of One State Street against AAC with the treatment that is statutorily and constitutionally mandated. The Plan as currently proposed, however, seeks to not only alter the rights of One State Street *vis-à-vis* AAC, but would, read literally, preclude One State Street from any recovery against AFG in any future bankruptcy or other proceedings. This is because of the blanket releases of AFG proposed in the Plan.

Again, One State Street is placed in a position different from policy holders. Policy holders do not have claims against AFG, which is not in the insurance business. Thus, these broad releases may not have much practical effect on most claimants in the rehabilitation, but must be curtailed as to One State Street.

A. Articles 8 and 9 of the Plan Proposes Extraordinarily Broad Releases, Injunctions, and Immunities.

Article 8 of the Plan proposes to provide astonishingly broad releases and an injunction against numerous third-parties, providing:

> All Holders of Claims are precluded from asserting against the Segregated Account, the General Account or AAC, or their respective successors or property or any of their respective current or former members, shareholders, affiliates, officers, directors, employees or agents, any Claims, obligations, rights, causes of action or liabilities, based upon any act, omission, transaction, or other activity of any kind or nature, other than as expressly provided for in this Plan. Except as otherwise provided in this Plan, and except as otherwise agreed by the Rehabilitator or the Management Services Provider, all Holders of Claims shall be permanently barred and enjoined from asserting against the Segregated Account, the General Account or AAC, or their respective successors or property or any of their respective current or former members, shareholders, affiliates, officers, directors, employees or agents, any of the following actions on account of such Claim: (i) commencing or continuing in any manner any action or other proceeding on account of such Claim, or the property to be distributed under the terms of this Plan, other than to enforce any right to Distribution to such Holders under this Plan; . . . and (v) acting or proceeding in any manner, in any place whatsoever, that does not conform to, or comply with, the provisions of this Plan.

Plan § 8.01 (emphasis added).

Similarly, Article 9 of the Plan provides, *inter alia*, that the Segregated Account, AAC, and the General Account, and "each of their respective current and former members, shareholders affiliates, officers, directors, employees and agents" with blanket immunity from:

> any act or omission made in connection with, or arising out of, the Segregated Account, AAC or the General Account with respect to the Segregated Account, the Proceeding, this Plan (and the Confirmation Order related thereto), the consummation of this Plan, or the administration of this Plan or the property to be distributed under this Plan, whether prior to or following the commencement of the Proceeding, with the sole exception of acts or omissions resulting from intentional fraud or willful misconduct

Plan §§ 9.01, 9.02 (emphasis added).

B. The Court Has No Jurisdiction To Approve Of The Releases, Or Issue The Injunctions And Immunities, Set Forth In The Plan.

A threshold question in the approval of any release or immunity, or the granting of an injunction, is whether the Court has jurisdiction over the affected claims. *See, e.g., Johns-Manville Corp. v. Chubb Indemnity Ins. Co.* (*In re Johns-Manville Corp.*), 600 F.3d 135, 146, 153 (2d Cir. N.Y. 2010) (holding that even "a [federal] bankruptcy court only has jurisdiction to enjoin third-party non-debtor claims that directly affect the *res* of the bankruptcy estate"). If a court has jurisdiction, the question then becomes whether the scope of the requested relief is permissible. In bankruptcy proceedings, where access to broader federal power is available, numerous federal bankruptcy courts, district courts, and courts of appeal have held that releases of non-debtors from liability to creditors is only permissible, if at all, in extraordinary circumstances, where the release is narrowly tailored, and when there is substantial consideration provided by the third party. *See In re Airadigm Commc'ns*, 519 F.3d 640, 655-56 (7th Cir. 2008) (providing an overview of the various approaches to third-party releases and holding any release must be narrowly tailored); *Deutsche Bank AG v. Metromedia Fiber Network, Inc.* (*In re Metromedia Fiber Network, Inc.*), 416 F.3d 136, 142 ("Courts have approved nondebtor releases when: the estate received substantial consideration . . ."). Even if the requested release is appropriate in unique cases, most jurisdictions approve third-party releases only if narrowly tailored to claims "'arising out of or in connection with' the reorganization itself." *Id.*

The releases and injunctions contained in section 8.01, and the immunities contained in section 9.02, exceed any standard of appropriateness and are certainly not narrowly tailored. For example, the releases and injunctions in section 8.01 do not apply only to actions arising in connection with the rehabilitation or are even limited to acts relating in some way to the

Segregated Account. Instead, section 8.01 applies to "any act, omission, transaction, or other activity of any kind or nature" of, *inter alia*, any present or former shareholder or affiliate of AAC. The limitless breadth of the release is shown by a simple example. If, in the future, a former director of AAC sets fire to an office building which, by happenstance, is owned by a policy holder, section 8.01 would preclude any tort claim against the director simply because the owner of the building was a policy holder.

C. There is No Basis Or Jurisdiction To Adjudicate Claims Against AFG In The Rehabilitation Of AAC.

Although the potential claims of One State Street against AFG are not as dramatic, section 8.01 provides a similarly repugnant result for One State Street. As currently proposed, section 8.01 would enjoin One State Street from asserting any claim against AFG, a shareholder and an affiliate of AAC, arising under the Headquarters Lease. As a threshold matter, AFG is not within the jurisdiction of this Court for rehabilitation, and the Court has no jurisdiction to provide AFG any such release. Further, AFG is not providing any consideration to either the Segregated Account or One State Street to support its unwarranted release of a liability which the Rehabilitator admits may be in the range of $94 million. There is no proper purpose or rational basis for the Rehabilitator to seek any release of AFG in these proceedings with respect to any claim of One State Street simply because AFG and AAC both have liability under the Headquarters Lease.

To be clear, the Rehabilitator is not simply asking the Court to confirm a plan of rehabilitation to postpone payment on certain claims to enable a purported equitable distribution of assets. The Rehabilitator is asking the Court to affirmatively order the release of, enter a permanent injunction against, and provide immunity from, past, present, and future claims that

have no relation whatsoever to AAC or these proceedings. This is directly contrary to law and should not be condoned by this Court.

IV. THE PLAN DOES NOT ADDRESS AAC'S OBLIGATIONS TO ENTER INTO A NEW LEASE UPON REJECTION OF THE HEADQUARTERS LEASE BY AFG.

Pursuant to the express terms of the Headquarters Lease, AAC is obligated to enter into a new lease on comparable terms upon any rejection of the lease by AFG in a bankruptcy proceeding. To the extent that such an obligation falls within the "contingent liability, if any" under the Headquarters Lease that was allocated to the Segregate Account, the Plan does not address this obligation.

In the event that AFG files bankruptcy and rejects the Headquarters Lease, AAC has a contractual obligation to enter into a new lease, which will have arisen after the commencement of the rehabilitation proceeding. If such obligation has somehow been allocated to the Segregated Account, One State Street has, at a minimum, an administrative claim against the Segregated Account for this specific obligation. "General Claims," however, are defined as

> All Claims which are not Administrative Claims or Policy Claims, and are not other wise entitled to priority under the Act or an order of the Court, including, but not limited to, (i) any Claim submitted by One State Street, LLC or it successor or assignee arising from the disputed contingent liability of the Segregated Account, if any, under the [Headquarters Lease] . . .

Plan § 1.28 (emphasis added). As applied to One State Street, it is ambiguous whether the definition precludes One State Street from filing an Administrative Claim. The Plan should be modified to expressly provide that the Plan, or the treatment or classification of any claim of One State Street thereunder, has no prejudicial effect on One State Street's ability to seek allowance of an administrative claim.

Should OCI or the Rehabilitator take the position that AAC's contractual obligation to sign a new lease is part of a General Claim of One State Street and precludes the allowance of an Administrative Claim, the allocation of this obligation and the absence of any prospect of recovery on this claim constitute a taking in violation of the Fifth and Fourteenth Amendments to the United States Constitution, and Section 13 of Article I of the Wisconsin Constitution. *See, e.g., Kelo v. City of New London*, 545 U.S. 469, 477-78 (2005).

V. SECTION 4.06 OF THE PLAN VIOLATES THE STATUTORILY MANDATED CLAIMS PROCESS

After proposing to trample various constitutional and statutory substantive rights, the Rehabilitator also proposes, for good measure, to alter the procedural rights of claimants to contest what the Rehabilitator hopes will be unilateral claims determinations. Section 645.65 of the Wisconsin Statutes provides a clear process for the resolution of disputed claims. Specifically, the statute provides

> NOTICE OF REJECTION AND REQUEST FOR HEARING. When a claim is denied in whole or in part by the liquidator, written notice of the determination and of the right to object shall be given promptly to the claimant and the claimant's attorney by first class mail at the address shown in the proof of claim. Within 60 days from the mailing of the notice, the claimant may file objections with the court. If objections are not filed within that period, the claimant may not further object to the determination.

WIS. STAT. § 645.65(1) (emphasis added).

In the Plan, however, the Rehabilitator provides for a claims resolution process contrary to the plain language of the statute. Section 645.65 of the statute requires the Rehabilitator to provide written claims determinations, and a claimant is required to file an objection to the determination with the Court within sixty days. In contrast, section 4.06 of the Plan provides that the Rehabilitator will provide written objections to claims, and any claimant who receives such a written notice must, within sixty days, respond to the Rehabilitator in writing setting forth

all factual and legal bases for the claim. The Rehabilitator is then provided a further undefined time to reassess the claim and submit a further notice of denial to the claimant. A claimant is only afforded the opportunity to seek judicial relief by filing a motion after this protracted process is complete.

The alteration of the claims objection process proposed in the Plan will result in a legal conundrum. Are objecting claimants required to follow the Plan, and file objections with the Rehabilitator within sixty days of receiving the Rehabilitator's claim objection? Or are claimants required to follow the statute, and file the objection with the Court? Either course will provide the Rehabilitator with the argument that the objecting claimants waived their rights by failing to comply with either the Plan or the statute. The Rehabilitator is afforded no discretion to re-write the statute, and the disputed claims process in section 4.06 of the Plan should not be approved.

VI. THE PLAN IS PLAGUED WITH UNINTELLIGBLE PROVISIONS AND WITH PROVISIONS THAT HAVE NO RATIONAL BASIS.

In addition to constitutional and statutory violations, the Plan also contains terms and provisions that defy logic and, in some cases, are written in such a way to preclude any decryption of their impact. The Plan should not be approved until such terms and provisions are corrected.

A. Language in Section 4.01 Is Unintelligible.

The last sentence of section 4.01 of the Plan provides: "Claims under Surplus Notes or Junior Surplus Notes shall not be treated as Administrative Claims, Policy Claims or General Claims for purposes of this Plan." This language is unclear, seemingly circular, and the potential impact of the provision cannot be readily ascertained.

B. Section 7.02 of the Plan Purports to Provide the Rehabilitator With Discretion to Inequitably Alter The Plan to the Detriment of General Claims.

Section 7.02 of the Plan provides that the Rehabilitator can petition the Court to amend the Plan if "the Rehabilitator has determined, in his sole and absolute discretion, that such an amendment is equitable to the interests of the Holders of Policy Claims generally." Plan § 7.02 (emphasis added). Such language remarkably omits Holders of General Claims. The rehabilitation statute expressly provides that the purpose of rehabilitation is for the "protection of the interests of insureds, creditors, and the public generally" through the "[e]quitable apportionment of any unavoidable loss." WIS. STAT. § 645.01. Accordingly, the statute expressly requires that the Rehabilitator act in the protection of the interests of not only Policy Claims, but also in the protection of the interests of General Claims.

C. Section 8.01 of the Plan Should Be Amended To Provide That Claims Are Only Discharged Following Payment In Full.

Section 8.01 of the Plan provides that upon "Distribution," defined to include the distribution of the Junior Surplus Notes, the claims are to be full and unconditionally settled, satisfied, discharged, and released. While a distribution under a properly approved Plan may discharge a claim as to the entity in rehabilitation, there is no basis or rationale to deem the claim as paid in full. Determining a claim to be full and unconditionally settled upon distribution may have unintended consequences beyond this case.

VII. ONE STATE STREET INCORPORATES ALL ARGUMENTS MADE IN ITS MOTION FOR DISSOLUTION OR MODIFICATION OF THE TEMPORARY INJUNCTION.

The Plan purports to make permanent the prior temporary injunction and finalize the creation of the Segregated Account. One State Street filed a motion on June 22, 2010 (the "Motion to Dissolve"), to dissolve the temporary injunction issued by this Court on March 24, 2010. In summary, the Motion to Dissolve raised several arguments, including without

limitation, that: (i) the Wisconsin statute governing segregated accounts does not permit allocation of AAC's liability under the Headquarters Lease to the Segregated Account; (ii) the attempt to separate the benefits and liabilities of the Headquarters Lease violates the Wisconsin statutes; (iii) the segregated account is not adequately capitalized as to the Headquarters Lease; (iv) the allocation of liability under the Headquarters Lease to the Segregated Account is not justified; (v) the allocation of the liability under the Headquarters Lease to the Segregated Account violates fraudulent transfer law; and (vi) the allocation of liability under the Headquarters Lease violates the Wisconsin and United States Constitutions, including the equal protection and takings clauses thereunder.

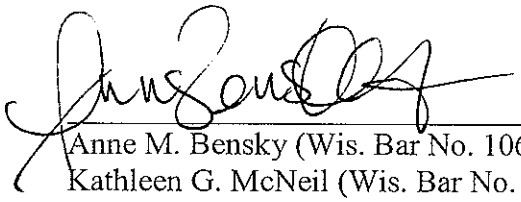
At the hearing on the Motion to Dissolve, OCI attempted to justify the allocation of liability under the Headquarters Lease to the Segregated Account on the basis that the secured note and reinsurance agreement backstopped the obligations of the Segregated Account. On October 26, 2010, the Court issued an order denying the Motion to Dissolve, but did not address the basis for the decision with respect to most of the arguments raised by One State Street in the Motion to Dissolve. Now, after obtaining a favorable decision on the Motion to Dissolve, OCI substantially changes the facts by proposing (via the Junior Surplus Note) to relegate One State Street to the very back of the line with respect to such backstop obligations and reserving the ability to place future claims ahead of any recovery by One State Street.

To the extent the Plan proposes to make permanent the prior temporary injunction and finalize the creation of the Segregated Account, One State Street incorporates by reference all arguments made by One State Street in the Motion to Dissolve, the memorandum in support of the Motion to Dissolve, the memorandum in reply to the Rehabilitator's opposition to the Motion

to Dissolve, and on the record at the hearing conducted on the Motion to Dissolve, all as if set forth in full herein.

Respectfully submitted this eighth day of November, 2010

GARVEY MCNEIL & ASSOCIATES, S.C.



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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

WITNESS LIST OF ONE STATE STREET LLC FOR HEARING ON CONFIRMATION OF THE PLAN OF REHABILITATION

One State Street LLC ("One State Street"), in accordance with this Court's Scheduling Order Regarding Rehabilitator's Motion for Confirmation of Plan of Rehabilitation dated October 18, 2010 (the "Scheduling Order"), hereby submits the following list of witnesses which One State Street may call at the confirmation hearing. The witnesses below were previously identified as witnesses the Rehabilitator expected to call pursuant to its witness list dated October 21, 2010 (the "Rehabilitator's Witness List"). One State Street expects to cross-examine each of the witnesses identified below on some or all of the topics of examination identified in the Rehabilitator's Witness List. To the extent the Rehabilitator does not call one or more of the witnesses identified in the Rehabilitator's Witness List or address the topics identified therein, One State Street intends to question the witnesses on direct examination in its portion of the case. One State Street requests that the Office of the Commissioner of Insurance ("OCI") and the Rehabilitator voluntarily produce the witnesses for examination at all days of the confirmation hearing. To the extent agreement is not reached regarding the voluntary appearance of the witnesses, One State Street will issue subpoenas for the appearance of the witnesses at the confirmation hearing.

As One State Street intends to cover the following topics primarily on cross-examination, the order of the presentation of the witnesses will largely depend on the order in which the witnesses are called by the Rehabilitator. To the extent the Rehabilitator does not call one or more witnesses or address the topics identified in the Rehabilitator's Witness List, One State Street may call on direct examination the following witnesses to present testimony on some or all of the following topics:

1. Sean Dilweg, the Wisconsin Commissioner of Insurance and the Court-appointed Rehabilitator in this proceeding. The undersigned reserves the right to elicit direct testimony from Mr. Dilweg on the following subjects pertaining to Ambac and this proceeding:

   A. OCI's increasing regulatory involvement regarding Ambac 2008 to March 2010;
   B. Fall 2009 to March 2010—OCI's concerns and actions;
   C. OCI's regulatory options and restructuring decisions, and related public policy considerations;
   D. The bank group settlement—challenges, process and benefits;
   E. OCI's preference for a voluntary restructuring process;
   F. The Segregated Account approach;
   G. Working with Ambac's board of directors to avoid a contested proceeding;
   H. The commitment of OCI resources to the Rehabilitation process;
   I. The Plan and its structure;
   J. Working with Ambac in furtherance of OCI's rehabilitation goals and the development and implementation of the Plan; and
   K. Any other subjects or issues raised by OCI or the Rehabilitator at plan confirmation which this witness is competent to address.
   L. Potential liquidation recoveries for creditors in a liquidation of AAC or in a liquidation of the Segregated Account.

2. Roger A. Peterson, the Director of the Wisconsin Office of the Commissioner of Insurance Bureau of Financial Analysis and Examinations. The undersigned reserves the right to elicit direct testimony from Mr. Peterson on the following subjects pertaining to Ambac and this

proceeding:

A. The topics covered in his prior four affidavits on file in this proceeding;

B. Investigation, analysis and oversight of Ambac and the Segregated Account—pre-rehabilitation to present;

C. Any of the topics identified above as to Commissioner Dilweg as to which the undersigned deems additional testimony from Mr. Peterson to be appropriate;

D. The Segregated Account allocation process;

E. The recently completed student loan policy assessment process;

F. The Disclosure Statement and exhibits;

G. Financial terms and aspects of the Plan, including the cash/note split;

H. The capital support for the Segregated Account and Plan;

I. The annual reporting and adjustment process under the Plan;

J. OCI's efforts to develop a fair and equitable Plan;

K. OCI's informed judgment regarding the advantages of the Segregated Account rehabilitation and Plan over the regulatory alternatives;

L. OCI's work with Ambac as to the rehabilitation and Plan; and

M. Any other subjects or issues raised by OCI or the Rehabilitator at plan confirmation which this witness is competent to address.

N. Potential liquidation recoveries for creditors in a liquidation of AAC or in a liquidation of the Segregated Account.

3. Cathleen J. Matanle, an Ambac Managing Director in Risk Management. The undersigned reserves the right to elicit direct testimony from Ms. Matanle on the following subjects pertaining to Ambac and this proceeding:

A. Ambac's corporate organization, personnel, infrastructure and systems to deliver necessary services to the Segregated Account;

B. The extensive information provided to OCI over the past two-plus years, including the complexity, confidentiality and sensitivity of that information and the effort to assist OCI's analysis of it;

C. Management of investment portfolio;

D. Evaluation and payment of claims. Description of systems and processes;

E. Capability and commitment to assisting the Rehabilitator in carrying out the Plan;

F. Each topic covered in her prior two affidavits on file in this proceeding;

and

G. Any other subjects or issues raised by OCI or the Rehabilitator at plan confirmation which this witness is competent to address.

H. Potential liquidation recoveries for creditors in a liquidation of AAC or in a liquidation of the Segregated Account.

4. David Barranco, a Managing Director in the Ambac Restructuring and Commutations Group. The undersigned reserves the right to elicit direct testimony from Mr. Barranco on the following subjects pertaining to Ambac and this proceeding:

A. Student loan assessment process;

B. Resources and ability to achieve recoveries and mediation. Steps to be taken and methods for decision-making;

C. Approach to negotiation of future commutations, amendments or other compromises or restructuring of policy exposures;

D. Capability and commitment to assisting the Rehabilitator in carrying out the Plan;

E. Ambac's role as Management Services Provider, including OCI Rehabilitator oversight and interaction; and

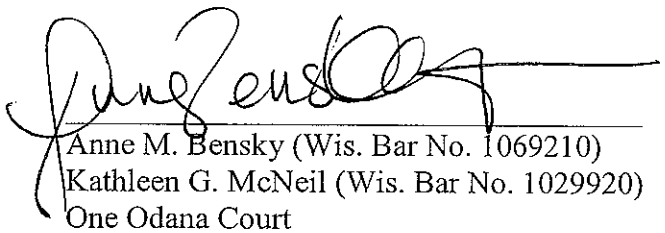
F. Any other subjects or issues raised by OCI or the Rehabilitator at plan confirmation which this witness is competent to address.

G. Potential liquidation recoveries for creditors in a liquidation of AAC or in a liquidation of the Segregated Account.

One State Street reserves the right to call these or other witnesses at the hearing to offer rebuttal testimony.

Respectfully submitted this eighth day of November, 2010

GARVEY MCNEIL & ASSOCIATES, S.C.



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