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December 2, 2010

Honorable William D. Johnston  
Lafayette County Courthouse  
P.O. Box 40  
626 Main Street  
Darlington WI 53530

Re: *In the Matter of the Rehabilitation of:  
Segregated Account of Ambac Assurance Corporation  
Dane County Case No. 10-CV-1576*

Dear Judge Johnston:

I regret the need to further brief CAPCO's Objection to the Rehabilitation Plan in a piecemeal fashion, but the Rehabilitator's citation to certain Wisconsin statutes during oral argument on Tuesday raises a new issue that must, in fairness, be addressed.

In his initial brief in support of confirmation, the Rehabilitator addressed the reinsurance issue in a single paragraph, simply citing several cases from other states. See *Rehabilitator's Brief in Support of Motion for Confirmation*, filed October 21, 2010, at 19-20. In his reply brief, the Rehabilitator again cited the cases from foreign jurisdictions, but also developed an argument based on *Peerless Insurance Company v. Manson* and three specific references to statutes within Chapter 645. See *Rehabilitator's Reply Brief in Support of Motion for Confirmation*, filed November 12, 2010, at 21-22. In the initial brief and the "sur-reply brief" filed on behalf of CAPCO, we demonstrated that the cases from foreign jurisdictions should be given no weight in the interpretation of Wisconsin's statute. We also explained that when *Peerless* was

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read in conjunction with *Pella Farmers Mut. Ins. Co. v. Hartland Richmond Town Ins. Co.* and applied to § 645.68, Wis. Stat., these cases and the context of Chapter 645 support CAPCO's position.

In oral argument on Tuesday, Attorney Michael Van Sicklen cited, for the first time, other Wisconsin insurance statutes outside of Chapter 645, including the troublesome § 600.01(1)(b)1:

(b) Unless otherwise expressly provided, chs. 600 to 646 do not apply to:

1. Reinsurance.

If it is the Rehabilitator's position that Chapter 645 does not apply to contracts of reinsurance, CAPCO will agree. In fact, in light of Rehabilitator's reliance on that § 600.01(1)(b)1, CAPCO must affirmatively request that the Court apply the literal terms of this statute and find that Chapter 645 cannot be applied to Ambac as a "reinsurer" or to CAPCO's reinsurance contract with Ambac. CAPCO must therefore be removed from the Segregated Account and from any restrictions imposed by the Rehabilitation Plan or the related injunction.

The only way to avoid that conclusion is to find that the plain meaning of § 600.01(1)(b)1, when applied to Chapter 645, leads to an absurd and unreasonable result. Such reasoning, however, does not provide license to then selectively apply § 600.01(1)(b)1, as Mr. Van Sicklen appears to request, and to find that § 645.68(3) *does not apply* to reinsurance but that § 645.68(5) *does apply* to reinsurance, or that the definition of "policy" does not apply to reinsurance but that most of Chapter 645 does apply.

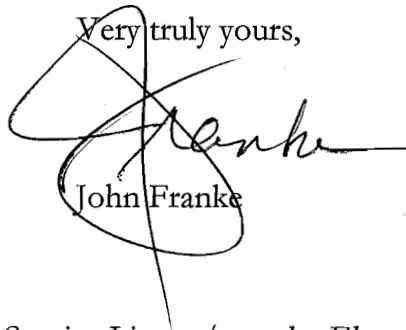
Section 600.01(1)(b)1 was not created until after Chapter 645. *See* 1971 Act 260. At most, § 600.01(1)(b)1 creates an ambiguity as to *whether* Chapter 645 can be applied to insurance companies that issue reinsurance contracts or to claims made under reinsurance contracts. If the court resolves that ambiguity by finding

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that Chapter 645 does apply, then § 600.01(1)(b)1 creates no ambiguity as to *how* it applies. It must be applied using the principles of statutory construction and the reasoning set forth in our previous briefs. Moreover, even if it could logically be said that § 600.01(1)(b)1 somehow creates an ambiguity within the priority classification of § 645.68, the applicable legislative history, unchallenged by the Rehabilitator, still compels the conclusion that the legislature intended that reinsurance contracts be considered “Loss Claims” under subsection (3) and not residual claims under subsection (5).

Whether this Rehabilitation proceeding applies at all to CAPCO’s reinsurance contract and whether CAPCO’s claims are given subsection (3) priority are matters of extreme importance to CAPCO. If the Court feels that further briefing or additional oral argument on the application of § 600.01(1)(b)1 would be helpful, CAPCO would be happy to proceed at the Court’s direction.

Very truly yours,



John Franke

JF/js

Enc.

cc Counsel of Record (see attached Service List; w/enc.; by Electronic Mail)

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