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December 3, 2010

Honorable William D. Johnston
Lafayette County Courthouse
P.O. Box 40
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:

In connection with CAPCO's Objection to the Rehabilitation Plan, I write to note our objections to the proposed Decision and Final Order filed by the Rehabilitator on November 29, 2010. Specifically we object to Findings of Fact ¶¶ 94 and 95, and Conclusions of Law ¶ 3. *See Proposed Decision and Final Order*, at 31-32 and 53.

Paragraphs 94 and 95 of the proposed Findings of Fact ask the Court to find that the Plan's treatment of reinsurance agreements is consistent with OCI's past practice. These findings are based entirely on two very brief answers given by Roger Peterson testimony on November 26. *See Tr.*, at 218:5 – 219:3, a copy of which is attached. This testimony was apparently offered as to the level of deference to be given to the Rehabilitator's interpretation of the statute. The extraordinarily vague and generalized testimony is insufficient to support the specific proposed Findings of Fact and, more importantly, immaterial to the Court's inquiry because it is insufficient to assist the Court in determining the appropriate level of deference.

Mr. Peterson's testimony says nothing about whether the OCI has specifically had to address the statutory question at issue, how many times it might have been addressed, whether the issue was contested, what the Commissioner's conclusion was, and what the Commissioner's rationale for its interpretation might have been. In determining the deference to be given to an agency interpretation of law, a court typically has the written findings and conclusions of the agency in the decision under review, the agency's rationale

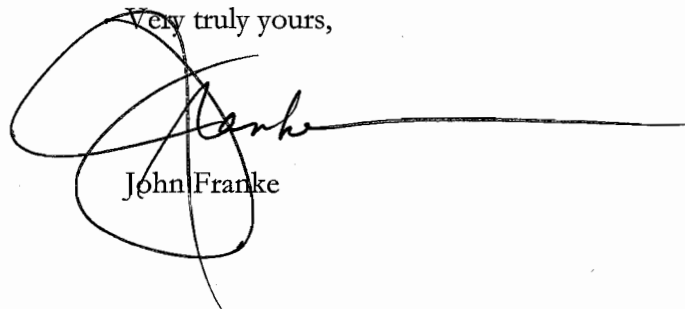
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for its interpretation of the statute, and specific evidence of past interpretations of the same statute. *See, for example, Bammert v. LIRC*, 2000 WI App 28, ¶¶ 3, 11, 232 Wis. 2d 365. No such record has been made in this case. Moreover, these proposed Findings of Fact are irrelevant because the Rehabilitator makes no effort to tie them to a particular standard of review. The only rationale for the Plan's apparent statutory interpretation is provided in briefs filed by counsel for the Rehabilitator, a rationale based on the notion that "other states do it that way." For reasons discussed in our briefs, this is not a rational basis on which to interpret the words of Wisconsin statutes.

Based on its Objection and briefs, CAPCO also objects to the Rehabilitator's proposed Conclusion of Law ¶ 3. CAPCO requests that the Court substitute instead the following conclusion of law:

3. Under the priority structure of Wis. Stat. § 645.68, potential claims under the reinsurance contract between the Consumer Asset Protection Company and Ambac must be treated as Loss Claims under subsection (3) of the statute and therefore as "policy claims" under the Plan. If claims are subsequently filed that raise issues of priority under subsections (5) through (11) of the statute, the Rehabilitator must take steps to modify the Plan so as to apply the statutory priority to such claims. In other respects, the Plan's payment provisions properly comport with Wis. Stat. § 645.68.

Very truly yours,



John Franke

JF/js

Enc.

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

1 proceedings regarding the priority handling of types
2 of claims in these delinquency proceedings?

3 A. I personally have acted as Rehabilitator or Liquidator
4 of several companies. I'd have to think.

5 Q. Has there been a consistent practice at OCI in these
6 delinquency proceedings in terms of the prioritization
7 of the different types of claims, policy claims,
8 contract claims, reinsurance claims and the like?

9 MR. DEVORE: Objection; relevance. Past
10 practices don't affect what's legal under the statute.

11 THE COURT: Could you read back the question?

12 (Question read back.)

13 THE COURT: Your response to the objection?

14 MR. VAN SICKLEN: I think past practice is
15 relevant in terms of showing OCI's consistent
16 practices in terms of the discretion its decisions
17 should be accorded.

18 THE COURT: Agreed. Overrule the objection.
19 You may answer the question.

20 Do you remember it?

21 A. OCI staff is quite cognizant of the priority scheme
22 established in the law and I believe very respectful
23 of that, and past practice has always been consistent
24 with that.

25 Q. And is this Plan in regard to the prioritization of

1 types of claims consistent with that uniform past
2 practice?

3 A. I believe it is.

4 MR. VAN SICKLEN: Your Honor, I still have a
5 ways to go probably. I wonder if I should get to a
6 certain target to close Mr. Peterson? I won't finish,
7 I don't think.

8 THE COURT: Ah, we were looking at about -- we
9 did five o'clock yesterday. Is that workable for
10 everybody? Why don't you keep going then.

11 Mr. Peterson, do you have any problem with that?

12 MR. PETERSON: No. That's fine, your Honor.
13 Thank you.

14 MR. VAN SICKLEN: And I'll do my best to try to
15 meet the deadline.

16 THE COURT: If you don't, we'll stop at 5:00.

17 MR. PETERSON: Perhaps a little water would be
18 advisable.

19 BY MR. VAN SICKLEN:

20 Q. Mr. Peterson, are you familiar with a --

21 A. Thank you very much.

22 Q. I'm sorry -- an insurer in Illinois named Triad?

23 A. I am.

24 Q. And how has the Illinois Department handled that
25 company's financial challenges?

In the Matter of the Rehabilitation of: Segregated Account of Ambac Assurance Corporation
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