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December 6, 2010

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Honorable William D. Johnston  
Lafayette County Circuit Court  
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Darlington, Wisconsin 53530-0040

Re: *In the Matter of the Rehabilitation of Segregated Account of Ambac Assurance Corporation*, Case No. 10 CV 1576 (Dane County Circuit Court)

Dear Judge Johnston:

I am writing to briefly respond to the December 2, 2010 sur-surreply letter brief<sup>1</sup> filed by CAPCO in opposition to the Rehabilitator's position that any claim made by CAPCO on its reinsurance contract should be treated as a general class (5) contract claim rather than as a more senior class (3) claim based on an insurance policy under Wis. Stat. §§ 645.68(3) and (5). Contrary to the assertion in CAPCO's sur-surreply letter brief, the Rehabilitator's position is that the priority scheme in § 645.68 applies to all types of insurance and non-insurance claims, including contracts of reinsurance. The eleven classes of claim priorities under § 645.68 encompass all types of claims, ranging from class (1) administrative costs, to class (3) claims under insurance "policies" on down to class (11) proprietary claims of shareholders or other equity owners.

As I highlighted in closing argument, the Wisconsin Insurance Code, Chapter 600-646, distinguishes between insurance policies entitled to class (3) priority from reinsurance contracts entitled to only class (5) priority. As expressly noted in § 600.01(1)(b)(1), references to insurance policies under the insurance code do not include reinsurance contracts "unless otherwise expressly provided." Hence, the definitions in §§ 600.03(25) and (35) to "insurance" and "policies" do not include reinsurance contracts because those definitions do not expressly so provide.

The distinction throughout the Insurance Code between insurance policies and reinsurance contracts is confirmed in the general provisions of Chapter 631 pertaining to the business of insurance in Wisconsin. Compare § 631.01(1) governing "insurance policies" with § 631.01(2) pertaining to "contracts used in reinsurance."

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<sup>1</sup> CAPCO's December 2<sup>nd</sup> letter brief is the second brief it filed after the Rehabilitator's Prehearing Reply Brief regarding confirmation.



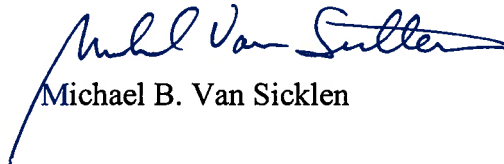
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Although the most recent Wisconsin case which addresses the difference between insurance policies and reinsurance contracts arose in a different context not involving rehabilitation, the Court's discussion of the differences between insurance and reinsurance supports the Rehabilitator's position here. *See Peerless Insurance Co. v. Manson*, 27 Wis. 2d 601, 608, 135 N.W.2d 258 (1965). Tellingly, CAPCO tries to distinguish the case law cited by the Rehabilitator from other jurisdictions in which courts have uniformly accorded reinsurance contract claims lower priority than insurance policy claims in delinquency proceedings, but CAPCO cites no authority (because there is none) which affirmatively supports CAPCO's position that this Rehabilitation Court should overlook the claim-priority distinction between insurance policies and reinsurance contracts.

Very truly yours,

FOLEY & LARDNER LLP



Michael B. Van Sicklen

cc: John Franke (via email)  
Counsel of Record (via email)  
Jody Baux, Dane County Clerk (via first-class mail)