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KAMALA D. HARRIS
Attorney General of the State of California
JOYCE E. HEE (State Bar No. 88610)
Supervising Deputy Attorney General
KRISTIAN D. WHITTEN (State Bar No. 58626)
Deputy Attorney General
455 Golden Gate, Suite 11000
San Francisco, California 94102-7004
Telephone: (415) 703-5589
Facsimile: (415) 703-5480
Email: kris.whitten@doj.ca.gov

ENDORSED
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Superior Court of California
County of San Francisco
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BY: MICHAEL RAYBAY
Deputy Clerk

Attorney for Applicant Dave Jones,
Insurance Commissioner of the State of California
in his Capacity as Conservator of
Majestic Insurance Company

SUPERIOR COURT FOR THE STATE OF CALIFORNIA
CITY AND COUNTY OF SAN FRANCISCO

INSURANCE COMMISSIONER OF THE
STATE OF CALIFORNIA,

Applicant,

v.

MAJESTIC INSURANCE COMPANY,
and DOES 1-50, inclusive,

Respondents.

Case No. CPF-11-511261

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
CONSERVATOR'S MOTION FOR
ESTABLISHMENT OF CLAIMS BAR
DATE AND APPROVAL OF FORM OF
NOTICE**

Date: September 30, 2011
Time: 9:30 AM
Dept.: 301
Judge: Hon. Peter J. Busch

**EXEMPT from filing fees per Govt. Code
§ 6103**

I.

INTRODUCTION

California Insurance Commissioner Dave Jones ("Conservator"), in his role as Conservator of Majestic Insurance Company ("Majestic"), seeks an Order Establishing a Claims Bar Date for the filing of general creditor claims against Majestic of January 31, 2012, and providing that notice of such Claims Bar Date shall be given to potential general creditors no later than 90 days prior to the Claims Bar Date. The requested Claims Bar Date will provide sufficient time for potential general creditors to receive notification and file any claims while avoiding the additional administrative expense of an extended claims period. The Conservator also requests that the Court approve a proposed Form of Notice of the Claims Bar Date for publication in the same newspapers used for notice of the Rehabilitation Plan – the Los Angeles Daily Journal, the Sacramento Bee, the San Diego Union Tribune, the San Francisco Chronicle, and the Poughkeepsie Journal. In addition to publication of this Form of Notice, the Commissioner will serve the Form of Notice on all known general creditors at their address shown in Majestic's records.

II.

FACTUAL BACKGROUND

On April 21, 2011, Majestic was placed into conservation and Insurance Commissioner Dave Jones was appointed as its Conservator. On June 2, 2011, this Court approved the Conservator's Rehabilitation Plan for Majestic and the associated Rehabilitation Agreement, under which a Renewal Rights and Asset Purchase Agreement, a Loss Portfolio Transfer and Quota Share Reinsurance Agreement, and a Reinsurance Administrative Services Agreement (collectively, the "Rehabilitation Transaction Agreements") were to be entered into between the Conservator, Majestic, AmTrust North America, Inc., and Technology Insurance Company. The Rehabilitation Plan transactions closed on July 1, 2011, including the execution of the Rehabilitation Transaction Agreements as well as other ancillary agreements. *See* Declaration of David Wilson in Support Of Conservator's Motion for Establishment of Claims Bar Date and Approval of Form of Notice ("Wilson Decl."), ¶ 3. Pursuant to the Rehabilitation

1 Agreement, the closing of these transactions provided for the satisfaction of all known
2 policyholder liabilities for the policyholder class (priority class 2) defined in California Insurance
3 Code section 1033(a)(2). Wilson Decl., ¶ 3. The Rehabilitation Agreement also provides, in
4 section 8.2, for the disposition of general creditor claims (priority classes three through nine) via
5 the statutory claims process. Section 8.2(i) provides for the setting of a Claims Bar Date for
6 general creditor claims. Wilson Decl., ¶ 4.

7 III.

8 ARGUMENT

9 A. The Conservator Requests an Order Establishing a Claims Bar Date 90 Days After 10 Notice.

11 Given the relatively small pool of general creditors of Majestic, and the fact that
12 many such creditors already received notice of Majestic's Conservation and the Rehabilitation
13 Plan, the Conservator believes that a Claims Bar Date for general creditor claims of January 31,
14 2012, with notice thereof to be given no less than 90 days prior to the Claims Bar Date, will
15 provide sufficient time for all general creditors to receive notice and file claims without
16 burdening the estate with unnecessary delay or expense. Wilson Decl., ¶¶ 5-6.

17 There is no provision of the Insurance Code that expressly provides a required
18 notice period preceding a claims bar date in a rehabilitation. While Insurance Code section
19 1021(a) provides for a notice period of six months to a year for a full *liquidation* of a company in
20 conservation, such an extended timeline is not necessary here. There are only a few dozen
21 general creditors, including vendors and other parties, likely to file claims against the
22 conservation estate. Wilson Decl., ¶ 4. Moreover, every month that the administration of general
23 creditor claims is delayed will result in further administrative expense to the estate, leaving fewer
24 assets to be distributed among Majestic's creditors and shareholder. Wilson Decl., ¶ 5.

25 B. The Conservator Requests an Order Approving Publication of the Proposed Form of 26 Notice of the Claims Process in the Same Newspapers That Carried Notice of the Rehabilitation Plan.

27 In addition to requesting the establishment of a Claims Bar Date, the Conservator
28 also requests that the Court approve publication of the proposed Form of Notice of the Claims

1 Bar Date and the general creditor claims process. A true and correct copy of the proposed Form
2 of Notice is attached to the Wilson Declaration as Exhibit A and to the Proposed Order lodged
3 herewith. The Conservator proposes to provide notice of the Claims Bar Date and the general
4 creditor claims process by mailing the Form of Notice to all known general creditors at their
5 addresses as shown in Majestic's records and by publishing the Form of Notice of the claims
6 process in the same newspaper publications in which he published notice of the Rehabilitation
7 Plan, namely, the Los Angeles Daily Journal, the Sacramento Bee, the San Diego Union Tribune,
8 the San Francisco Chronicle, and the Poughkeepsie Journal.

9 Publication in these newspapers was determined by the Court to be sufficient for
10 notice to interested parties of the Rehabilitation Plan, and the Conservator believes that, in
11 addition to individual notice to known creditors, publication in these journals will adequately
12 notify all general creditors of the claims process and Claims Bar Date.¹ Further, Majestic's
13 physical operations were limited to its Poughkeepsie, San Francisco, Irvine, and San Diego
14 offices. Wilson Decl., ¶ 6. Publication of notice in these cities, as well as Los Angeles, should
15 therefore reach potential general creditors who might seek to submit claims against the
16 conservation estate.

17 IV.


18 CONCLUSION

19 For all of the foregoing reasons, the Conservator requests that the Court issue an
20 Order (1) establishing a Claims Bar Date of January 31, 2012 for the filing of claims by general
21 creditors in priority classes three through nine and approving a notice period of no less than 90
22 days, and (2) approving distribution of the Form of Notice of the Claims Bar Date and the claims
23 process to general creditors and publication of such notice in the above-listed newspapers.

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28 ¹ Insurance Code section 1022 contains provisions for notice by publication of orders to liquidate insurers and related claims processes. Majestic is not being liquidated, and therefore the specific publication requirements of Insurance Code section 1022 do not apply.

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2 Dated: September 2, 2011.

KAMALA D. HARRIS
Attorney General of California
JOYCE E. HEE
Supervising Deputy Attorney General
KRISTIAN D. WHITTEN
Deputy Attorney General

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7 By: 
8 Kristian D. Whitten
9 Attorney for Applicant
10 Dave Jones, Insurance Commissioner of the
11 State of California in his Capacity as
12 Conservator of Majestic Insurance Company
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DECLARATION OF SERVICE BY OVERNIGHT COURIER

Case Name: **Insurance Commissioner v. Majestic Insurance Company**
No.: **CPF-11-511261**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter; my business address is: 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102-7004. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for overnight mail with Federal Express. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the overnight courier that same day in the ordinary course of business.

On September 2, 2011, I served the attached:

1. Conservator's Notice of Motion and Motion for Establishment of Claims Bar Date and Approval of Form of Notice;
- ✓ 2. Memorandum of Points and Authorities in Support of Conservator's Motion and Motion for Establishment of Claims Bar Date and Approval of Form of Notice;
3. Declaration of David Wilson in Support of Conservator's Motion and Motion for Establishment of Claims Bar Date and Approval of Form of Notice; and
4. [Proposed] Order Establishing Claims Bar Date and Approving Form of Notice.

by transmitting a true copy via electronic mail. In addition, I placed a true copy thereof enclosed in a sealed envelope, in the internal mail system of the Office of the Attorney General, for overnight delivery, addressed as follows: SEE ATTACHED LIST

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on September 2, 2011, at San Francisco, California.

Eva Merrick
Declarant


Signature

SERVICE LIST (as of 9/2/11)

Linda J. Clark
Hiscock & Barclay, LLP
50 Beaver Street
Albany, NY 12207
lclark@hblaw.com
Attorney for Former Members of Group Self-Insurance Workers' Compensation Trust Administered by an Affiliate of Majestic Insurance Company

Robert K. Edmunds
Buchanan Intersoll & Rooney, LLP
One America Plaza
600 West Broadway, Suite 1100
San Diego, CA 92101
Robert.edmunds@bipc.com
Attorneys for Xtium, LLC

David R. Pfalzgraf, Jr.
Daniel E. Sarzynski
Charles D.J. Case
Rupp, Baase, Pfalzgraf, Cunningham & Coppola LLC
1600 Liberty Building
Buffalo, NY 14202
pfalzgraf@ruppbaase.com
Attorneys for New York State Workers' Compensation Board

John A. Sebastinelli
Michelman & Robinson LLP
455 Market Street, Suite 1420
San Francisco, CA 94105
jsebastinellil@mrllp.com
Attorneys for Majestic USA Capital, Inc. Inc., Majestic Capital, Ltd., Compensation Risk Managers, LLC, Compensation Risk Managers of California, LLC, Eimar, LLC and Embarcadero Insurance Holdings, Inc.

Craig S. Bloomgarden
Manatt, Phelps & Phillips, LLP
11355 West Olympic Boulevard
Los Angeles, CA 90064-1614
cbloomgarden@manatt.com
Attorney for New York State Workers' Compensation Board

Glen A. Van Dyke
Van Dyke Law Group
12277 Soaring Way, Suite 206
Truckee, CA 96161
gvandyke@vandykelawgroup.com
Attorney for Mark Tanner Construction, Inc., Doc Gelso Construction, Inc., Mt. Lincoln Construction, Inc. and Sierra Paint & Chemical, Inc.