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12 Attorneys for Applicant Dave Jones,
Insurance Commissioner of the State of California
13 in his Capacity as Conservator of Majestic Insurance
Company **EXEMPT from filing fees per Govt.
Code § 6103**

15 SUPERIOR COURT OF THE STATE OF CALIFORNIA
16 CITY AND COUNTY OF SAN FRANCISCO

18 DAVE JONES, INSURANCE
19 COMMISSIONER OF THE STATE OF
20 CALIFORNIA,

21 Applicant,

22 v.

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

24 Respondents.

Case No. CPF-11-511261

**INSURANCE COMMISSIONER DAVE
JONES' NOTICE OF MOTION AND
MOTION FOR ORDER APPROVING
CONSERVATION TRUST
AGREEMENT AND PURCHASE AND
SALE AGREEMENT; AND
MEMORANDUM OF POINTS AND
AUTHORITIES**

**Date: February 25, 2013
Time: 9:30 a.m.
Dept.: 302
Judge: Hon. Marla A. Miller**

1 PLEASE TAKE NOTICE that on February 20, 2013 at 9:30 a.m., or as soon thereafter as
2 the matter may be heard in the above-entitled Court, located at 400 McAllister Street, Room 103,
3 San Francisco, CA 94103, Dave Jones, Insurance Commissioner (“Commissioner”) of the State
4 of California, as the statutory Conservator (“Conservator”) of Majestic Insurance Company
5 (“Majestic”) pursuant to the Court’s April 21, 2011 Order Appointing Conservator and
6 Restraining Orders (“Conservation Order”), will and hereby does move the Court for an Order
7 Approving (1) the Conservation Trust Agreement between the Commissioner in his capacity as
8 Conservator and the Commissioner in his capacity as Trustee, and (2) the Purchase and Sale
9 Agreement entered into by the Commissioner in his capacity as Conservator and California
10 General Insurance Services, LLC (“CGIS”). A true and correct copy of the Purchase and Sale
11 Agreement is attached as Exhibit D to the accompanying Declaration of David Wilson. A true
12 and correct copy of the Conservation Trust Agreement is attached as Exhibit F to the
13 accompanying Declaration of David Wilson.

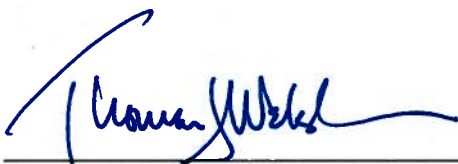
14 As described in the accompanying Memorandum of Points and Authorities, execution of the
15 Conservation Trust Agreement and Purchase and Sale Agreement is in the best interest of the
16 Majestic estate and its remaining creditors. This Motion is made pursuant to the provisions of the
17 Rehabilitation Plan and Rehabilitation Agreement (including all associated transactions), this Court’s
18 April 21, 2011 Order Appointing Conservator And Restraining Orders and June 2, 2011 Order
19 Approving Rehabilitation Plan, and the Conservator’s power and authority under Cal. Ins. Code
20 §§ 1010, *et seq.* This Motion is based on the accompanying Memorandum of Points and Authorities,
21 the supporting Declaration of David Wilson, and such arguments and evidence as may be made at
22 the hearing on this Motion.

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1 Dated: January 23, 2013

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in his Capacity as Conservator of Majestic
Insurance Company

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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. INTRODUCTION

3 California Insurance Commissioner Dave Jones, acting as the statutory conservator
4 (“Conservator”) of Majestic Insurance Company (“Majestic”), moves the Court for an order
5 approving (1) the Conservation Trust Agreement between the Commissioner in his capacity as
6 Conservator and the Commissioner in his capacity as Trustee, and (2) the Purchase and Sale
7 Agreement entered into by the Commissioner in his capacity as Conservator and California
8 General Insurance Services, LLC (“CGIS”).

9 On April 21, 2011, the Court ordered Majestic placed into conservation and appointed
10 Insurance Commissioner Dave Jones as its Conservator. Declaration of David Wilson In Support
11 Of Insurance Commissioner Dave Jones’ Motion For Order Approving Conservation Trust
12 Agreement And Purchase and Sale Agreement (“Wilson Decl.”), ¶ 2. The Conservator prepared
13 and executed, with the Court’s approval, a Rehabilitation Plan that provided for the sale of all of
14 Majestic’s policyholder claims and liabilities to AmTrust North America, Inc. (“AmTrust”) and
15 Technology Insurance Company (“Technology”). Wilson Decl., ¶ 3. In addition to and in
16 combination with the Rehabilitation Plan, the Conservator entered into the Rehabilitation
17 Agreement with AmTrust and Technology, as well as a Renewal Rights and Asset Purchase
18 Agreement, a Loss Portfolio Transfer and Quota Share Reinsurance Agreement, and a
19 Reinsurance Administrative Services Agreement (collectively, the “Rehabilitation Transaction
20 Agreements”), in addition to other ancillary agreements. *Id.* The Rehabilitation Plan,
21 Rehabilitation Agreement, and Rehabilitation Transaction Agreements were approved by the
22 Court on June 2, 2011. *Id.*, Ex. B (Order Approving Rehabilitation Plan).

23 All transactions contemplated by the Rehabilitation Plan and Rehabilitation Agreement
24 closed on July 1, 2011 and provided for the satisfaction of all known policyholder liabilities to
25 Majestic’s estate. Wilson Decl., ¶ 4. Majestic is still currently in possession of all non-
26 policyholder liabilities, as well as a small amount of assets. Wilson Decl., ¶ 4. Section 8.3 of the
27 Rehabilitation Agreement expressly reserved to the Conservator the authority to establish a
28 conservation or liquidating trust for the management of Majestic’s residual assets and

1 liabilities. *Id.*

2 As part of his ongoing duties, on July 18, 2012 the Conservator issued a request for
3 proposals for the purchase of Majestic's charter of incorporation and related assets as a "clean
4 'shell' free and clear of pre-acquisition liabilities." Wilson Decl., ¶ 5, Ex. C (Request for
5 Proposals). The Conservator received roughly a half dozen inquiries from interested parties in
6 response to his request. *Id.* The best bid was made by CGIS. *Id.* CGIS and the Conservator
7 subsequently entered into the Purchase and Sale Agreement, pending the Court's approval, which
8 details the purchase by CGIS of Majestic's corporate shell, charter documents, including the
9 articles of incorporation and bylaws of Majestic, certificates of authority, and certain pledged
10 assets in the aggregate amount of approximately Three Million Eight Hundred Seventy Thousand
11 Dollars (\$3,870,000) related to the Certificates of Authority (the "Pledged Surplus," collectively,
12 the "Corporate Assets"). Wilson Decl., ¶ 6, Ex. D (Purchase and Sale Agreement). The Purchase
13 and Sale Agreement also provides for the cancellation of Majestic's existing stock and the
14 issuance of new stock to CGIS. *Id.* Meanwhile, the Embarcadero Liquidating Trust, as
15 successor-in-interest to Embarcadero Insurance Holdings, Inc ("Embarcadero"), and the
16 Conservator have stipulated to the provision of a Trust Certificate to the Embarcadero Liquidating
17 Trust that will replace its existing stock in Majestic, pursuant to the terms of the Conservation
18 Trust Agreement. *Id.*, Ex. E (Stipulation).

19 In order to facilitate the execution of the Purchase and Sale Agreement, the Conservator
20 entered into the Conservation Trust Agreement, which creates the Conservation Trust pursuant to
21 the Conservator's authority under the Rehabilitation Agreement. Wilson Decl., ¶ 7, Ex. F
22 (Conservation Trust Agreement). Under the Conservation Trust Agreement, all of Majestic's
23 assets and liabilities not constituting the Corporate Assets shall be placed into the Conservation
24 Trust and shall continue to be managed by the Conservator for the benefit of Majestic's estate and
25 its creditors. *Id.* The Corporate Assets will then be transferred to CGIS according to the
26 provisions of the Purchase and Sale Agreement. *Id.*

27 Execution of the Conservation Trust Agreement and Purchase and Sale Agreement is in
28 the best interest of the Majestic estate and its remaining creditors. Wilson Decl., ¶ 8. In

1 exchange for the Corporate Assets, the Conservation Trust will receive \$500,000 from CGIS (in
2 addition to roughly \$3.8 million to offset the value of the pledged deposit assets included within
3 the Corporate Assets). *Id.* This \$500,000 represents real value for Majestic's Corporate Assets
4 and will increase the recovery for Majestic's remaining creditors. *Id.*

5 **II. THE CONSERVATOR HAS THE AUTHORITY TO ENTER INTO THE**
6 **CONSERVATION TRUST AGREEMENT AND PURCHASE AND SALE**
7 **AGREEMENT.**

8 Pursuant to the Court's April 21, 2011 Order Appointing Conservator and Restraining
9 Orders ("Conservation Order"), the Conservator was granted broad authority to conduct the
10 business of Majestic, including the authority to take control of all of Majestic's assets. *See*
11 Wilson Decl., Ex. A (Conservation Order) at ¶¶ 1-5.

12 This is in addition to the general powers granted to the Conservator under California
13 Insurance Code § 1010, *et seq.* Under section 1011, title and possession to Majestic's assets is
14 vested in the Commissioner, who is authorized to conduct Majestic's business for the benefit of
15 Majestic's policyholders, creditors, and the public interest. Cal. Ins. Code § 1011; *see also*
16 *Carpenter v. Pac. Mut. Life Ins. Co.*, 10 Cal. 2d 307, 331. The Conservator has broad authority to
17 conduct Majestic's business affairs, including the authority to sell or transfer the assets of
18 Majestic, subject to the Court's approval. Cal. Ins. Code § 1037. In addition, section 1037(a)
19 authorizes the Commissioner to take all actions "necessary or expedient . . . to carry on and
20 conduct the business affairs [of the company]." Section 1037 also provides that the
21 Commissioner's authority under the section is not limited to those powers specifically listed. Cal.
22 Ins. Code § 1037 ("The enumeration, in this article, of the duties, powers and authority of the
23 commissioner in proceedings under this article shall not be construed as a limitation upon the
24 commissioner, nor shall it exclude in any manner his or her right to perform and to do such other
25 acts not herein specifically enumerated, or otherwise provided for, which the commissioner may
26 deem necessary or expedient for the accomplishment or in aid of the purpose of such
27 proceedings.").

28 Thus, the Conservator has the authority to enter into these agreements under the
Conservation Order and the California Insurance Code. Moreover, the execution of the

1 Conservation Trust Agreement and Purchase and Sale Agreement is lawful, reasonable, and in the
2 best interest of the Majestic estate and its creditors. The sale of Majestic's corporate shell will
3 provide for an increased recovery for Majestic's creditors and will facilitated the wind-up of the
4 Majestic estate.

5 **III. CONCLUSION**

6 For all of the foregoing reasons, the Conservator requests that the Court approve the
7 Conservation Trust Agreement and the Purchase and Sale Agreement.

8 Dated: January 23, 2013

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State of California in his Capacity as
18 Conservator of Majestic Insurance Company

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