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in his Capacity as Conservator of Majestic Insurance
Company

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

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

DAVE JONES, INSURANCE
COMMISSIONER OF THE STATE OF
CALIFORNIA,

Applicant,

v.

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

Respondents.

Case No. CPF-11-511261

**NOTICE OF APPLICATION AND
APPLICATION FOR ORDER
APPROVING CONSERVATOR'S
PROPOSAL TO DISBURSE ASSETS TO
APPROVED CREDITOR AND TO
APPROVE SPECIAL PUBLICATION
NOTICE RELATING TO "GREAT
WESTERN" POLICIES**

**Date: July 8, 2014 (Res # 060414-04)
Time: 9:30 a.m.
Dept.: 302**

1 TO ALL INTERESTED PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on July 8, 2014 at 9:30 a.m. or as soon thereafter as the
3 matter may be heard in Department 302 of the Superior Court of California in and for the City
4 and County of San Francisco, California, Insurance Commissioner Dave Jones ("Conservator"),
5 in his capacity as Conservator of the Majestic Insurance Company in Conservation ("Majestic"),
6 will and hereby does apply to the Court for an Order approving the Conservator's Application for
7 an Order:

- 8 (1) Authorizing the Commissioner immediately to distribute and/or assign to the sole
9 allowed Class 9 Creditor under Insurance Code section 1033(a)(9) (the "Class 9
10 Creditor"), or to Lloyd T. Whitaker, the duly appointed liquidating trustee thereof
11 (the "Liquidating Trustee"), certain non-cash assets of Majestic, consisting of all
12 rights, claims and causes of action that Majestic or its conservation estate has or
13 may have against any former directors, officers, employees, agents, consultants,
14 affiliates, or subsidiaries of Majestic or any one or more of its affiliates, arising
15 from, relating to or in connection with his, her or its relationship with Majestic,
16 including but not limited to those for breach of fiduciary duty, aiding and abetting
17 breach of fiduciary duty, and gross negligence (the "D&O Claims");
- 18 (2) Approving a form of publication notice, and authorizing publication thereof in up
19 to three newspapers of general circulation in California, for the purpose of
20 notifying any potential claimants under insurance policies issued in California by
21 Majestic between 1982 and 1984, when Majestic operated under the name "Great
22 Western Insurance Company" (the "Great Western Claimants"), of the
23 Conservator's intention to distribute substantially all of the remaining assets of the
24 Majestic estate to the Class 9 Creditor; and
- 25 (3) Authorizing the Commissioner, under certain specified conditions and not prior to
26 the time specified in the Order on this Application, to make a second interim
27 distribution to the Class 9 Creditor in the amount of \$5 million;
- 28

1 The Application is based on this notice, the provisions of the California Insurance Code,
2 the attached points and authorities, the Declarations of David E. Wilson, Kevin McGrath and
3 Stephen Ungar in support thereof, and the complete files, records of and prior orders entered in
4 this case.

5
6
7 Dated: June 5, 2014

Respectfully Submitted,

8 KAMALA D. HARRIS
9 Attorney General of California
JOYCE E. HEE
Supervising Deputy Attorney General

10 

11 ANNE MICHELLE BURR
12 Deputy Attorney General
13 *Attorneys for Applicant Dave Jones,*
14 *Insurance Commissioner of the State of*
California, in his Capacity as Conservator
of Majestic Insurance Company

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Pursuant to Insurance Code sections 1033 and 1037, as well as the provisions of the
4 Rehabilitation Plan previously approved by the Court in this case, the Conservator seeks court
5 approval of his proposal to make a second interim distribution of a substantial portion of
6 Majestic's remaining cash and non-cash assets to the Embarcadero Liquidating Trust, the sole
7 Class 9 creditor of Majestic (the "Class 9 Creditor"), or to Lloyd T. Whitaker, the duly appointed
8 liquidating trustee thereof (the "Liquidating Trustee"), and to provide special publication notice to
9 alert any potential claimants under Great Western Policies (as defined below) of the distribution
10 plan described herein (the "Distribution Plan"). The Conservator's Distribution Plan is in
11 furtherance of his duty to conduct an orderly wind-up of the affairs of Majestic pursuant to the
12 Insurance Code and the Rehabilitation Plan, and is in the best interests of Majestic's
13 policyholders and creditors.

14 Based on the background, arguments and evidence filed in support of this Application, the
15 Conservator respectfully requests that this Court approve this Application and authorize the
16 Conservator to proceed with the Distribution Plan.

17 **II. BACKGROUND**

18 **A. Majestic's Conservation and Rehabilitation Plan**

19 This insurance conservation proceeding commenced with the April 21, 2011 filing of the
20 Insurance Commissioner's verified application to place Majestic into statutory conservation due
21 to Majestic's financial impairment and the Commissioner's determination that allowing Majestic
22 to continue operating its insurance business outside of conservation would be hazardous to
23 policyholders and the public. At the time of its conservation, Majestic operated as a "monoline"
24 workers' compensation insurance company – meaning that the only policies it issued and that
25 remained in-force were policies of workers' compensation and employer liability insurance in
26 California and approximately 17 other states in which Majestic was licensed.¹ (Declaration of

27 ¹ During 1982 through 1984, Majestic operated and issued policies under the name Great
28 Western Insurance Company ("Great Western"). The company became a "monoline" workers'
compensation company when it was acquired in 1986 by Embarcadero Insurance Holdings, Inc.

David E. Wilson (“Wilson Decl.”), ¶ 11.) The Court (the Honorable Peter Busch presiding) entered the Conservation Order the morning of April 21. (*Id.*, ¶ 2, Ex. A (Conservation Order).)

Later that same day, the Commissioner (now acting in his capacity as Conservator) filed an application to approve and authorize a Rehabilitation Plan for Majestic. (Wilson Decl., ¶ 3.) In the period immediately prior to these filings, the Commissioner had worked on the development of the Rehabilitation Plan with Majestic’s management and shareholder (Embarcadero Holdings), and with AmTrust Financial Service, Inc. (“AmTrust”), an unaffiliated insurance group interested in acting as the financial sponsor of the Rehabilitation Plan. (*Id.*) The Court set a June 2, 2011 hearing date on the motion to approve the Rehabilitation Plan.

On June 2, 2011, after a full hearing, the Court approved the Commissioner’s application and entered the Rehabilitation Order.² (Wilson Decl., ¶ 4, Ex. B (Rehabilitation Order).) Several weeks thereafter, the transactions authorized under the Rehabilitation Plan were closed and the Rehabilitation Plan became fully effective. (Wilson Decl., ¶ 4.)

B. The Rehabilitation Plan.

In broad terms, the Rehabilitation Plan was structured to comply with the statutory priority scheme set forth in Insurance Code section 1033(a) for paying the claims and liabilities of an insurance company undergoing conservation or liquidation. (Wilson Decl., ¶ 5.) The priority scheme is relatively simple:

Class 1: Expenses of administration.

Class 2: Policyholder claims. This priority – generally the largest class of liabilities of an insurance company – includes the claims that arise from and within the coverage and liability limits of the insurance company’s policy obligations.

(“Embarcadero Holdings”). (Declaration of Kevin J. McGrath (“McGrath Decl.”), ¶¶ 2-3.) Further details are in Section II.D below.

² For the Court’s convenience, copies of the Court’s April 21, 2011 Conservation Order, and the June 2, 2011 Rehabilitation Plan Approval Order are provided as Exhibits A and B to the Declaration of David E. Wilson.

Classes 3-6: Other priority claims. For example, federal tax and priority claims (Class 3); regulatory fees to the Department of Insurance (Class 4); California tax claims (Class 5) and other claims having priority under state law (Class 6)

Class 7: General creditor claims (all other types of non-priority claims)

Classes 8-9: Equity Claims. Claims based on stock ownership, or other forms of investments that are payable only after all other creditors are paid.

(Wilson Decl., ¶ 5.)

The Rehabilitation Plan provided for the full payment of Class 2 policyholder claims under Majestic's workers' compensation policies through a reinsurance agreement with AmTrust,

known as a *Loss Portfolio Transfer and Quota Share Reinsurance Agreement* (“Reinsurance Agreement”). (Wilson Decl., ¶ 6.) Under the Reinsurance Agreement, an affiliate of AmTrust agreed (1) to fully reinsure and pay, without any reduction or aggregate limit, all workers’ compensation claims payable under Majestic’s policies, and (2) to reinsure and pay up to \$1 million in claims under some long-expired policies issued between 1982 and 1984 when the company operated under the name Great Western (the “Great Western Policies”). (*Id.*) The Conservator paid a reinsurance premium to AmTrust in exchange for its agreement to provide this coverage of the Class 2 claims. (*Id.*) As an integrated part of that transaction, the Conservator also sold substantially all of Majestic’s insurance operating assets to AmTrust. (*Id.*)

After the closing of the reinsurance and asset sale transactions, including the payment of the premium due under the Reinsurance Agreement that provided for satisfaction of Class 2 claims, the Conservator retained approximately \$14.3 million to apply towards satisfaction of Majestic's other liabilities. (Wilson Decl., ¶ 7.)

Pursuant to the Rehabilitation Plan, all creditors were notified of their right to file claims against Majestic prior to a specified claims bar date. (Wilson Decl., ¶ 8.) After the bar date, the Conservator received, reviewed, and made determinations on all of the claims to determine Majestic's liability on claims with a priority below Class 2 (payment of Class 2 claims having been provided for through the Reinsurance Agreement). (*Id.*) That administrative work was

completed during the latter half of 2013, after which the Conservator developed a plan for making distributions on account of Majestic's allowed creditor and equity claims. (*Id.*)

C. The Prior Distributions

On December 20, 2013, this Court (the Honorable Marla Miller presiding) heard and granted the Conservator's Application to make a distribution of assets to all approved creditors. (Wilson Decl., ¶ 9, Ex. C (Court's Order).) Pursuant to the Application and the Court's Order, the Conservator made distributions of (1) 100% of the amount owned to Majestic's Class 7 allowed creditors, together with statutory interest thereon (in the aggregate amount of \$2,028,839.41); and (2) a first interim distribution of \$2,000,000 to the Class 9 Claimant. Those distributions were made in January and February 2014. (Wilson Decl., ¶ 9.)

After the first interim distribution, the only remaining unpaid creditor of Majestic is the Class 9 Creditor. (Wilson Decl., ¶ 10.) The Conservator has, either through cash distributions or by making provisions for future payments pursuant to the Reinsurance Agreement, fully satisfied all of the known or reasonably anticipated policyholder priority claims, and all of the allowed general creditor claims. (*Id.*) Thus, consistent with the priority scheme set forth in the Insurance Code as incorporated into the Rehabilitation Plan, all residual assets of Majestic (after reasonable reserves for taxes, if any, and the remaining expenses of administration for completing the conservation and wind-up process) are available for orderly and timely distribution to the Class 9 Creditor or the Liquidating Trustee. (*Id.*)

D. The Great Western Policies

The Great Western Policies referred to above require some additional background information for the Court to rule on the Conservator's request that the Court approve a special publication notice regarding the Great Western Policies. The story involves the failure of two different insurance companies.

1. History of the Great Western Policies

Prior to Majestic's acquisition by Embarcadero Holdings in 1986, Majestic operated under the name "Great Western Insurance Company." (McGrath Decl., ¶ 2.) Great Western only wrote insurance policies for a few years in the early 1980s – specifically, from 1982 to 1984. (*Id.*) The

1 Conservator's best (and only) information about this period of time is that Great Western issued
2 commercial general liability policies to small businesses in California. (*Id.*) Great Western
3 ceased writing new policies at some point in 1984. (*Id.*)

4 During this time, Great Western was owned by John C. and Betty L. Mabee of San Diego.
5 (McGrath Decl., ¶ 3.) The Mabees also owned Golden Eagle Insurance Company. (*Id.*) In 1984,
6 the California Department of Insurance ordered Great Western to stop writing policies, and the
7 Mabees prepared to sell Great Western. (*Id.*) In order to prepare Great Western for sale as a
8 "clean shell" (i.e., a licensed insurance company that has no insurance liabilities), Great Western
9 transferred all of its insurance liabilities under the Great Western Policies to Golden Eagle
10 Insurance Company pursuant to a 100% reinsurance agreement. (*Id.*) Under that reinsurance
11 agreement, any claims that were made under the Great Western Policies were received,
12 administered and paid directly by Golden Eagle. (*Id.*) Golden Eagle retained all of the books and
13 records relating to the Great Western Policies in order to administer and pay claims under those
14 policies. (*Id.*) In 1986, Great Western was sold to Embarcadero Holdings, and was renamed
15 "Majestic Insurance Company." (*Id.*) Majestic thereafter sold *only* workers' compensation
16 insurance. (*Id.*) The Great Western Policies all expired prior to the end of 1985.³ (McGrath
17 Decl., ¶ 4.)

18 **2. The Failure of Golden Eagle Insurance Company.**

19 The 100% reinsurance arrangement between Great Western (by then known as Majestic
20 Insurance) and Golden Eagle worked fine for many years, up until the point that Golden Eagle
21 collapsed. (McGrath Decl., ¶ 5.) In January 1997, the Commissioner was required to place
22 Golden Eagle into conservation. (*Id.*) Under the Insurance Code priority statute – Section
23 1033(a) – the Class 2 policyholder priority specifically *excludes* liabilities assumed from other
24 insurance companies via reinsurance. (Ins. Code, § 1033(a)(2)(A).) So, Golden Eagle's
25

26 ³ The Conservator has limited information about the Great Western Policies, but understands
27 that the policies appear to have contained "occurrence" coverage – covering liability for events
28 that occurred during the policy period, rather than more modern "claims made" language – which
provides for coverage of claims actually made during the policy period. (McGrath Decl., ¶ 4.)
Thus, the Great Western Policies, in theory, could be triggered by events that occurred 30 years
ago, but that have not yet been discovered and reported. (*Id.*)

1 obligation to pay Great Western claims under the 100% reinsurance agreement with Majestic was
2 classified as a general creditor (Class 7) claim. (McGrath Decl., ¶ 5.) At the time of Golden
3 Eagle's conservation (which was subsequently converted to a liquidation), it was unclear whether
4 Golden Eagle would have sufficient funds to pay all of its general creditor (Class 7) claims in full,
5 including any future claims under the Great Western Policies. (*Id.*)

6 In January 1998, Majestic filed a timely proof of claim against Golden Eagle to preserve
7 its right to recover under the reinsurance agreement. (McGrath Decl., ¶ 6.) In 2006, Majestic's
8 claim was settled. (*Id.*) Under the settlement, the Golden Eagle liquidation estate paid a fixed
9 sum to Majestic, and the reinsurance agreement was "commuted" (*i.e.*, terminated). (*Id.*) As a
10 result of the commutation, Majestic resumed direct liability for the administration and full
11 payment of any claims that arose under the old Great Western Policies. (*Id.*) Again, since the
12 Great Western Policies had expired more than 20 years prior, there were few known claims made
13 under those policies. (*Id.*) In fact, since 1998 only six actual or potential claims have been
14 reported to Majestic under the Great Western Policies. (*Id.*; Declaration of Stephen B. Ungar
15 ("Ungar Decl."), ¶ 3.) In addition, by the time of Golden Eagle's liquidation it appears that most
16 (if not all) of the books and records relating to the Great Western Policies had been destroyed or
17 lost. (McGrath Decl., ¶ 6.) Both Majestic and Golden Eagle made a diligent search for those
18 records, but were unable to locate the relevant policy or claim files related to the Great Western
19 Policies. (*Id.*)

20 **3. Treatment of the Great Western Policies in the Majestic Rehabilitation Plan**

21 The Commissioner again had to address potential claims under the Great Western Policies
22 when Majestic was conserved in April 2011. (Wilson Decl., ¶ 12.) Notwithstanding the fact that
23 the Great Western Policies had expired nearly 30 years prior, and had given rise to few claims for
24 coverage for occurrences arising during the periods the Great Western Policies were in force, in
25 negotiating the Rehabilitation Plan and the Reinsurance Agreement with AmTrust, the
26 Commissioner ensured that a specific provision was made in the Rehabilitation Plan to pay future
27 claims that might arise and be properly payable under the Great Western Policies. (*Id.*)
28 However, given that neither Majestic nor Golden Eagle held any records relating to these policies,

1 AmTrust was unwilling to reinsure claims under the Great Western Policies without establishing
2 an aggregate limit (or “cap”) on the reinsurance coverage. (*Id.*) Thus, unlike the *unlimited*
3 reinsurance that covers claims under Majestic’s workers’ compensation policies, the reinsurance
4 coverage for claims under the Great Western Policies is capped at an aggregate limit of
5 \$1 million. (*Id.*)

6 In the three years since the Rehabilitation Plan was approved, no insurance claims have
7 been made to AmTrust under any Great Western Policies. (Ungar Decl., ¶ 3.) AmTrust has
8 received just one letter asking for documents related to a policy. (*Id.*) AmTrust diligently
9 investigated that request, but was unable to locate any documents. (*Id.*) The inquiry has not
10 resulted in a claim or any claim payments. (*Id.*) This provision in the Reinsurance Agreement
11 providing coverage for claims under the Great Western Policies will remain in effect unless or
12 until claims under those policies reach or exceed the \$1 million aggregate limit. (Wilson Decl., ¶
13 12.)

14 For purposes of this Application, the foregoing background relating to the Great Western
15 Policies is important because the Conservator has determined that it is currently fair and
16 reasonable to distribute a significant amount of the remaining assets of Majestic to the Class 9
17 Creditor, notwithstanding the fact that those assets would otherwise be available to pay any
18 claims under the Great Western Policies *in excess* of the \$1 million of protection provided under
19 the Reinsurance Agreement. (Wilson Decl., ¶ 13.) Because claims under the Great Western
20 Policies are Class 2 policyholder claims, and because the proposed distribution to the Class 9
21 Creditor will distribute assets that would otherwise be available to pay contingent claims that may
22 arise in the future, the Conservator proposes to make the cash distribution to the Class 9 Creditor
23 only after publishing a special notice that is designed to notify prior Great Western policyholders
24 that the distribution will be occurring. (*Id.*) If the publication notice results in the receipt of new
25 claims under the Great Western Policies that appear likely to exceed the \$1 million in coverage
26 available from AmTrust under the Reinsurance Agreement, the Conservator will not make the
27 cash distribution to the Class 9 Creditor, and will return to Court with a modified Distribution
28

1 Plan. (*Id.*) If no such claims are reported within forty-five (45) days after the last publication, the
2 Conservator will proceed with the cash distribution of \$5 million to the Class 9 Creditor. (*Id.*)

3 **E. The Great Western Notice**

4 Consistent with the foregoing background, the Conservator proposes publishing the
5 following legal notice (the "Great Western Notice") in up to three newspapers of general
6 circulation in California,⁴ which is where Great Western wrote policies during 1982 through
7 1984:

8 **To any person or business that purchased insurance from Great Western Insurance**
9 **Company ("Great Western") from 1982 through 1984.** Please take notice that your
10 rights to make claims and receive payment under insurance policies issued by Great
11 Western from 1982 through 1984 ("Great Western Policies") are being affected by legal
12 proceedings currently occurring in the Superior Court of the City and County of San
13 Francisco in a case entitled *Insurance Commissioner of the State of California v. Majestic*
14 *Insurance Company* (Case No. CPF-11-511261). Great Western Insurance, which was
15 renamed "Majestic Insurance Company" in 1986, was placed into statutory conservation
16 by the Insurance Commissioner in April 2011. In this proceeding, the Commissioner has
17 made reasonable, **but limited** provisions for the payment of claims under Great Western
18 Policies, and now intends to promptly distribute remaining assets to other creditors. It is
19 possible that the provision made for the payment of claims under Great Western Policies
20 may prove inadequate to pay future claims that are currently unknown and unreported,
21 and that the forthcoming distributions of assets to other creditors scheduled to occur in or
22 around August 2014 will mean that there are insufficient assets remaining to pay all future
23 claims under Great Western Policies. **If you were a policyholder under a Great**
24 **Western Policy and believe that you suffered or may suffer a loss covered under the**
25 **Great Western Policy, you must report the claim immediately (nothing in this Notice**
26 **shall operate as a waiver of any policy requirements relating to reporting a claim).**
If no material claims are reported to the Commissioner within forty-five (45) days after
the date of this publication, the Commissioner has been authorized by the Court to
proceed with distribution of Majestic's assets, and those assets will no longer be available
to pay future claims under the Great Western Policies. You may obtain additional
information about this proceeding and the proposed distribution to other creditors by
logging onto the website of the Insurance Commissioner's Conservation & Liquidation
Office at www.caclo.org. Information about Majestic and the Great Western Policies may
be obtained by clicking on the "Insolvent Companies" link, and then on "Majestic
Insurance Company." If you do not have access to the internet, please call the
Conservation & Liquidation Office at (415) 676-5000.

(Wilson Decl., ¶ 14.)

⁴ The three largest newspapers of general circulation in California are the *Los Angeles Times*,
the *San Diego Union-Tribune*, and the *San Francisco Chronicle*. The Conservator anticipates
publishing the Great Western Notice in these three papers to obtain the broadest coverage across
California.

1 The Conservator believes that the foregoing notice and publication plan is reasonable
2 under the circumstances to notify any potential claimants under Great Western Policies of the
3 proposed distribution to the Class 9 Creditor. (*Id.*) Given the absence of detailed books and
4 records relating to the Great Western Policies, the Conservator has no better alternative way in
5 which to provide notice to potential creditors regarding the Distribution Plan. (*Id.*)

6 **F. The D&O Claims**

7 Finally, the Conservator's Distribution Plan discussed below contemplates the immediate
8 distribution (by way of assignment) of certain non-cash assets of Majestic to the Class 9 Creditor
9 or the Liquidating Trustee, specifically, all rights, claims and causes of action that Majestic or its
10 conservation estate has or may have against any former directors, officers, employees, agents,
11 consultants, affiliates or subsidiaries of Majestic or any one or more of its affiliates, arising from,
12 relating to or in connection with his, her or its relationship with Majestic, including but not
13 limited to those for breach of fiduciary duty, aiding and abetting breach of fiduciary duty, and
14 gross negligence (the "D&O Claims"). (Wilson Decl., ¶ 15.) The Conservator has determined
15 that because the only remaining unpaid creditor of Majestic is the Class 9 Creditor, and because
16 prosecution costs to pursue recovery on the D&O Claims will deplete assets that otherwise would
17 be distributed to the Class 9 Creditor, the most efficient manner in which to pursue recovery
18 would be to consolidate all such claims with the Class 9 Creditor. (*Id.*) Thereafter, the Class 9
19 Creditor, acting by and through the Liquidating Trustee, may determine how best to prosecute the
20 D&O Claims and how much money to spend on that effort. (*Id.*) The Conservator and the Class
21 9 Creditor, by the Liquidating Trustee, have negotiated agreements with the individuals against
22 whom the D&O Claims will likely be asserted, tolling the statutes of limitations potentially
23 applicable to the D&O Claims, but the most recent agreement is set to expire soon. (*Id.*) The
24 Conservator desires to distribute and assign the D&O Claims to the Class 9 Creditor or the
25 Liquidating Trustee forthwith, upon the Court's approval of this Application. (*Id.*)

26 **G. The Distribution Plan**

27 Based on the foregoing, the Conservator proposes the following plan for making
28 distributions of the non-cash and cash assets of Majestic:

1 (b)), and to settle claims (subd. (c)). Section 1037 further authorizes the Commissioner “to
2 perform and to do such other acts not herein specifically enumerated, or otherwise provided
3 for, which the commissioner may deem necessary or expedient for the accomplishment or
4 in aid of the purpose of such proceedings.” (Ins. Code, § 1037(g).)

5 As noted above, the Conservator has made one prior distribution from the Majestic
6 estate to its section 1033(a)(7) creditors and Class 9 Creditor.⁵ With the successful
7 rehabilitation of Majestic and the sale of its insurance operations to AmTrust and its
8 licensed subsidiary, Technology Insurance Company, there are no unpaid policyholder
9 claims that have not been provided for. The Conservator has reserved sufficient assets to

10
11
12 ⁵ Section 1033 provides, in pertinent part:

13 (a) Claims allowed in a proceeding under this article shall be
14 given preference in the following order:

15 (1) Expense of administration.

16 (2) All claims of the California Insurance Guarantee Association . .
17 ., and associations or entities performing a similar function in other
18 states, together with claims for refund of unearned premium and all
19 claims under insurance and annuity policies or contracts, including
20 funding agreements, of an insolvent insurer that are not covered
21 claims.

22 ...

23 (3) Claims having preference by the laws of the United States.

24 (4) Unpaid charges due under the provisions of Section 736.

25 (5) Taxes due to the State of California.

26 (6) Claims having preference by the laws of this state.

27 (7) Claims of creditors not included in paragraphs (1) to (6),
28 inclusive.

(8) Certificates of contribution, surplus notes, or similar
obligations, and premium refunds on assessable policies.

(9) The interests of shareholders or other owners in any residual
value in the estate.

1 pay all future expenses of administration. There are no unpaid claims against Majestic
2 creditors that have a higher priority than the Class 9 Creditor. (Wilson Decl., ¶ 10.)

3 Accordingly, the Conservator has determined that, in the furtherance of the
4 administration of the estate and to reduce future administrative expenses, it is reasonable
5 and appropriate to proceed with the Distribution Plan, as outlined in this Application. As is
6 explained below, each element of the Conservator's Distribution Plan is a reasonable and
7 appropriate exercise of the Conservator's statutory discretion and authority.

8 **A. The Court Should Authorize the Immediate Distribution and Assignment**
9 **of Majestic's D&O Claims to the Class 9 Creditor.**

10 Section 1037 provides that the Conservator "[m]ay ... prosecute and defend any and all
11 suits and other legal proceedings." § 1037(f) (emphasis added). It further authorizes the
12 Commissioner "to do such other acts not herein specifically enumerated, or otherwise provided
13 for, which the commissioner may deem necessary or expedient for the accomplishment or in aid
14 of the purpose of [conservation] proceedings." § 1037(g).

15 Pursuant to this authority, the Conservator has determined that it would not be cost-
16 efficient for him to prosecute the D&O Claims at this time. The Conservator has further
17 determined, however, that it is appropriate and in the best interests of the estate and its remaining
18 stakeholders to distribute and assign Majestic's D&O Claims to the Class 9 Creditor or the
19 Liquidating Trustee, which has related claims against the same potential defendants due to the
20 overlapping make-up of the boards and officers within Majestic and its affiliates. Because some
21 of the statutes of limitations on these claims may expire very soon after this Application is heard
22 given the approaching expiration of the parties' tolling agreement, the Conservator respectfully
23 requests authorization to immediately assign the D&O Claims to the Class 9 Creditor or the
24 Liquidating Trustee forthwith, upon approval of the Application.⁶ The potential recovery on the
25 D&O Claims is a contingent asset that is neither necessary nor immediately available to pay any
26 claims against Majestic. Since any recovery will ultimately inure directly and solely to the Class

27 ⁶ If hearing on and approval of this Application is delayed for any reason, the Conservator
28 anticipates that an action will nonetheless be filed on the D&O Claims if necessary to preserve
the claims. This is an action that the Conservator is authorized to take without prior court
approval, pursuant to Insurance Code section 1037(f).

1 9 Creditor, the Conservator believes that it is reasonable and appropriate to allow the Class 9
2 Creditor, acting by and through the Liquidating Trustee, to control and pay all costs associated
3 with the prosecution of the D&O Claims.

4 **B. The Court Should Approve the Conservator's Proposed Form of**
5 **Publication Notice Related to the Great Western Policies.**

6 As explained above, the Conservator has made provision for payment of claims under the
7 Great Western Policies up to an aggregate limit of \$1,000,000. However, to the extent any claims
8 under these policies exceed \$1,000,000, Majestic is liable and such claims may be paid in whole
9 or in part from Majestic's remaining assets. Accordingly, to give these policyholders an
10 opportunity to present any claims before Majestic's assets are distributed to the Class 9 Creditor,
11 the Conservator proposes publication of the form of Notice set forth above, and to withhold
12 further cash distributions to the Class 9 Creditor for at least forty-five (45) days after the last
13 publication.

14 This proposed notice is reasonably calculated to apprise potential claimants under the
15 Great Western Policies that unless they report any remaining claims promptly, the Conservator
16 will distribute assets that might otherwise be available for payment of those claims. The
17 Conservator proposes publication of the Great Western Notice in up to three newspapers of
18 general circulation in California (including the *San Diego Union-Tribune*, the *Los Angeles Times*
19 and/or the *San Francisco Chronicle*). The Conservator's determination of which papers to
20 publish in will be based on a careful assessment of the publication cost, balanced against the
21 geographic area in which Great Western issued its policies at issue.⁷ The form of Notice will
22 also direct interested parties to the website maintained by the Conservator's Conservation &
23 Liquidation Office ("CLO"). The CLO's website is a recognized source of information regarding
24 insurance companies in conservation or liquidation in California. *Cf.* § 1022 (approving "the
25 liquidator's Internet Web site" as a source for providing ongoing information to creditors). The

26 ⁷ Because this proceeding is a conservation and rehabilitation proceeding, rather than a full
27 liquidation pursuant to Insurance Code section 1016, the Insurance Code provides no mandatory
28 direction regarding publication notice. However, section 1022, which applies to liquidations,
suggests the importance of linking the publication location to where the company did business
("The [liquidation] notice shall be published in newspapers of general circulation in geographic
areas pertinent to the liquidation.").

1 Conservator has determined that providing this notice is a necessary and appropriate means of
2 ensuring that the Great Western policyholders are given a reasonable opportunity to report any
3 remaining claims before the majority of Majestic's remaining are disbursed. *See* § 1037(g).

4 C. **The Court Should Authorize the Conservator To Make a Second Interim**
5 **Distribution of Cash to the Class 9 Claimant if No Material Claims or**
6 **Reports Are Received As a Result of the Great Western Notice.**

7 As explained above, the Rehabilitation Plan provides up to \$1 million of coverage for any
8 claims received under the Great Western Policies. In the more than three years since the
9 Rehabilitation Plan was approved, no actual claims have been received and no claims have been
10 paid. Given that the Great Western Policies expired nearly 30 years ago, and during the last 15
11 years few claims have been reported and only about \$630,000 has been paid in combined
12 indemnity and and net defense costs (McGrath Decl., ¶ 6), allotting \$1 million of coverage was a
13 reasonable provision for any future claims. And if the Conservator publishes the proposed
14 Notice, and no new claims are presented, the possibility of this \$1 million in coverage being
15 insufficient will be even more remote.

16 While the Insurance Code does not expressly provide for estimating the amount of and
17 reserving for contingent liabilities in conservatorship proceedings, the federal bankruptcy code
18 contains such a provision and is instructive here. In federal bankruptcy cases, the court is
19 authorized to estimate "any contingent or unliquidated claim, the fixing or liquidation of which,
20 as the case may be, would unduly delay the administration of the case." 11 U.S.C. § 502(c).
21 Since the Great Western Policies are "occurrence" policies there will always remain a possibility
22 that contingent claims will be filed in the future. But waiting indefinitely for claims to arrive in
23 order to fix the amount of these contingent liabilities would not just "unduly delay the
24 administration of the case," *id.*, it would prevent this conservatorship from ever concluding and
25 would unreasonably prejudice the Class 9 Creditor. Majestic cannot remain in conservatorship
26 forever. The Conservator, therefore, respectfully submits that the equitable and appropriate
27 course is to approve his proposal to publish notice and, if during the notice period no Great
28 Western policyholders report claims that could exceed AmTrust's \$1 million of coverage, to
authorize the Conservator to make a second interim distribution to the Class 9 Creditor from

1 Majestic's remaining assets.

2 Therefore, assuming no such material claims or reports are received, the Conservator has
3 determined that it is appropriate to make a second interim distribution to the Class 9 Claimant in
4 the amount of \$5 million. The amount of the proposed distribution is based on the Conservator's
5 assessment of the remaining administrative tasks associated with completing the final accounting
6 and other work necessary to file a final closing application to wind up the estate and discharge the
7 Conservator. (Wilson Decl., ¶ 13.) The Conservator expects the final estate closing application
8 will be filed, and a final distribution will be made, during the third or fourth quarter of 2014, with
9 the final timing being determined based on contingencies such as claims or reports under the
10 Great Western Policies.

11 If the Conservator receives claim reports related to the Great Western Policies that cause
12 him to determine, in his sole discretion, that the new claims could exceed the aggregate limit
13 under the Reinsurance Agreement, the Conservator will not make the proposed second interim
14 distribution to the Class 9 Creditor and will develop and submit to the Court an alternative
15 Distribution Plan.

16 WHEREFORE, the Conservator prays that the Court issue an Order as follows:

- 17 (1) Authorizing the Commissioner immediately to distribute and/or assign to the Class
18 9 Creditor or the Liquidating Trustee certain non-cash assets of Majestic,
19 consisting of the D&O Claims;
- 20 (2) Approving a form of publication notice, and authorizing publication thereof in up
21 to three newspapers of general circulation in California , for the purpose of
22 notifying any potential claimants under insurance policies issued in California by
23 Majestic between 1982 and 1984, when Majestic operated under the name "Great
24 Western Insurance Company" of the Conservator's intention to distribute
25 substantially all of the remaining assets of the Majestic estate to the Class 9
26 Creditor; and
27
28

1 (3) Authorizing the Commissioner, under certain specified conditions and not prior to
2 the time specified in the Order on this Application, to make a second interim
3 distribution to the Class 9 Creditor in the amount of \$5 million.

4 Dated: June 5, 2014

Respectfully Submitted,

5 KAMALA D. HARRIS
6 Attorney General of California
7 JOYCE E. HEE
8 Supervising Deputy Attorney General

9 

10 ANNE MICHELLE BURR
11 Deputy Attorney General
12 *Attorneys for Applicant Dave Jones,*
13 *Insurance Commissioner of the State of*
14 *California, in his Capacity as Conservator*
15 *of Majestic Insurance Company*
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RECEIVED
JUN - 5 2014
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12 in his Capacity as Conservator of Majestic Insurance
Company
13

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

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

20 Applicant,

21 v.

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

24 Respondents.
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Case No. CPF-11-511261

**[PROPOSED] ORDER APPROVING
CONSERVATOR'S PROPOSAL TO
DISBURSE ASSETS TO APPROVED
CREDITOR AND TO APPROVE
SPECIAL PUBLICATION NOTICE
RELATING TO "GREAT WESTERN"
POLICIES**

Date: July 8, 2014 (Res # 060414-04)
Time: 9:30 a.m.
Dept.: 302

1 California Insurance Commissioner Dave Jones ("Conservator"), as Conservator of
2 Majestic Insurance Company ("Majestic"), has applied for an Order approving the Conservator's
3 Application to disburse assets to Majestic's approved Insurance Code section 1033(a)(9) creditor,
4 and to publish notice to any potential claimants under insurance policies issued in California by
5 Majestic between 1982 and 1984, when Majestic operated under the name "Great Western
6 Insurance Company" (the "Great Western Policies"). The Court having considered the
7 Conservator's Application and the Declarations of David E. Wilson, Kevin McGrath and Stephen
8 Ungar in support thereof, and good cause appearing:

9 **IT IS ORDERED that:**

- 10 1. The Conservator is authorized to distribute and/or assign to the Embarcadero
11 Liquidating Trust, the sole allowed Class 9 Creditor under Insurance Code section
12 1033(a)(9) (the "Class 9 Creditor"), or to Lloyd T. Whitaker, the duly appointed
13 liquidating trustee thereof (the "Liquidating Trustee"), certain non-cash assets of
14 Majestic, consisting of all rights, claims and causes of action that Majestic or its
15 conservation estate has or may have against any former directors, officers,
16 employees, agents, consultants, affiliates, or subsidiaries of Majestic or any one or
17 more of its affiliates, arising from, relating to or in connection with his, her or its
18 relationship with Majestic, including but not limited to those for breach of
19 fiduciary duty, aiding and abetting breach of fiduciary duty, and gross negligence
20 ("the D&O Claims"), by executing any assignments or other documents the
21 Conservator determines are reasonable and necessary to vest the Class 9 Creditor
22 or the Liquidating Trustee with full authority to prosecute the D&O Claims;
- 23 2. The Conservator is authorized to publish the form of notice set forth in his
24 Application (the "Great Western Notice") in up to three newspapers of general
25 circulation in California; and
- 26 3. The Conservator is authorized, if no newly reported claims potentially subject to
27 coverage under the Great Western Policies are received within forty-five (45) days
28 following the last publication of the Great Western Notice, to distribute and pay a

1 total of \$5,000,000.00 to the Class 9 Creditor or the Liquidating Trustee as a
2 section 1033(a)(9) claimant. If, in the Conservator's sole judgment, newly
3 reported claims create a reasonable risk of liability under the Great Western
4 Policies in excess of the \$1,000,000.00 available under Majestic's reinsurance
5 agreement with Technology Insurance Company, Inc., an affiliate of AmTrust
6 Financial Service, Inc., the Conservator shall not distribute any cash to the Class 9
7 Creditor without further order of the Court following the submission of a modified
8 distribution plan; and

- 9 4. The Conservator is authorized to take any and all actions necessary to accomplish
10 the purposes of this Order.

11
12 Dated: _____, 2014

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14 _____
15 Judge of the Superior Court
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11 Attorneys for Applicant Dave Jones,
Insurance Commissioner of the State of California
12 in his Capacity as Conservator of Majestic Insurance
Company

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

14
15 SUPERIOR COURT OF THE STATE OF CALIFORNIA
16 CITY AND COUNTY OF SAN FRANCISCO

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

20 Applicant,

21 v.

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

23 Respondents.

Case No. CPF-11-511261

**DECLARATION OF KEVIN
MCGRATH IN SUPPORT OF
APPLICATION FOR ORDER
APPROVING CONSERVATOR'S
PROPOSAL TO DISBURSE ASSETS TO
APPROVED CREDITOR AND TO
APPROVE SPECIAL PUBLICATION
NOTICE RELATING TO "GREAT
WESTERN" POLICIES**

**Date: July 8, 2014 (Res # 060414-04)
Time: 9:30 a.m.
Dept.: 302**

**ENDORSED
FILED**
Superior Court of California
County of San Francisco

JUN - 5 2014

CLERK OF THE COURT
BY: BOWMAN LIU
Deputy Clerk

1 I, KEVIN J. McGRATH, hereby declare as follows:

2 1. I am the former General Counsel of Majestic Insurance Company, a position I held
3 from January 1, 2007 through June 1, 2011. Previously, I acted as outside counsel for Majestic.
4 I make this declaration in support of Insurance Commissioner Dave Jones' Application for Order
5 Approving Conservator's Proposal to Disburse Assets to Approved Creditor Claims and to
6 Approve Special Publication Notice Relating to "Great Western" Policies. The following facts are
7 known by me to be true and correct and of my own personal knowledge, except to those which I
8 have expressed as being based upon my information and belief, and if called upon to testify
9 thereto I would and could competently do so.

10 2. I am informed and believe that prior to Majestic's acquisition by Embarcadero
11 Insurance Holdings, Inc. ("Embarcadero Holdings") in 1986, Majestic operated under the name
12 "Great Western Insurance Company." I am further informed and believe that Great Western
13 only wrote insurance policies for a few years in the early 1980s – specifically, from 1982 to 1984.
14 The best (and only) available information about this period of time is that Great Western issued
15 commercial general liability policies to small businesses in California and that Great Western
16 ceased writing new and renewal policies in 1984.

17 3. During this time, Great Western was owned by John C. and Betty L. Mabee of San
18 Diego. The Mabees also owned Golden Eagle Insurance Company. In 1984, the California
19 Department of Insurance ordered Great Western to stop writing policies, and the Mabees prepared
20 to sell Great Western. In order to prepare Great Western for sale as a "clean shell" (i.e., a
21 licensed insurance company that has no insurance liabilities), Great Western transferred all of its
22 insurance liabilities under the Great Western Policies to Golden Eagle Insurance Company
23 pursuant to a 100% reinsurance agreement. Under that reinsurance agreement, any claims that
24 were made under the Great Western Policies were received, administered and paid directly by
25 Golden Eagle. Golden Eagle retained all of the books and records relating to the Great Western
26 Policies in order to administer and pay claims under those policies. In 1986, Great Western was
27 renamed "Majestic Insurance Company" and sold to Embarcadero Holdings. Majestic thereafter
28 sold *only* workers' compensation insurance.

1 4. To the best of my information and belief, the Great Western Policies all expired
2 prior to the end of 1985. While the available information about the Great Western Policies is
3 limited, the policies appear to have contained “occurrence” coverage – covering liability for
4 events that occurred during the policy period, rather than more modern “claims made” language –
5 which provides for coverage of claims actually made during the policy period. Thus, the Great
6 Western Policies, in theory, could be triggered by events that occurred 30 years ago, but that have
7 not yet been discovered and reported.

8 5. The 100% reinsurance arrangement between Majestic Insurance Company and
9 Golden Eagle worked as intended for many years, up until the point that Golden Eagle collapsed.

10 I am informed and believe that in January 1997, the Commissioner was required to place Golden
11 Eagle into conservation. Under the Insurance Code priority statute – Section 1033(a) – the Class
12 2 policyholder priority specifically *excludes* liabilities assumed from other insurance companies
13 via reinsurance. (Ins. Code, § 1033(a)(2)(A).) So, Golden Eagle’s obligation to pay Great
14 Western claims under the 100% reinsurance agreement with Majestic was classified as a general
15 creditor (Class 7) claim. At the time of Golden Eagle’s conservation (which was subsequently
16 converted to a liquidation), it was unclear whether Golden Eagle would have sufficient funds to
17 pay all of its general creditor (Class 7) claims in full, including any future claims under the Great
18 Western Policies.

19 6. In January 1998, Majestic filed a timely proof of claim against Golden Eagle to
20 preserve its right to recover under the reinsurance agreement. In 2006, Majestic’s claim was
21 settled. Under the settlement, the Golden Eagle liquidation estate paid a fixed sum to Majestic,
22 and the reinsurance agreement was “commuted” (i.e., terminated). As a result of the
23 commutation, Majestic resumed direct liability for the administration and full payment of any
24 claims that arose under the old Great Western Policies. Since the Great Western Policies had
25 expired more than 20 years prior, there were few known claims made under those policies. In
26 fact, between 1998 and June 1, 2011, only five actual or potential claims were reported to
27 Majestic under the Great Western Policies. Majestic paid about \$630,000 in combined indemnity
28 and net defense costs on one of those claims and nothing on the others.

1 7. In addition, by the time of Golden Eagle's liquidation it appears that most (if not
2 all) of the books and records relating to the Great Western Policies had been destroyed or lost.
3 Both Majestic and Golden Eagle made a diligent search for those records, but were unable to
4 locate the relevant policy or claim files related to the Great Western Policies.

5 I declare under penalty of perjury under the laws of the State of California that the
6 foregoing is true and correct.

7
8 Dated: June 2, 2013



Kevin J. McGrath

JUN - 5 2014

CLERK OF THE COURT

BY: SEAMAN LIU
Deputy Clerk

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

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

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

DAVE JONES, INSURANCE
COMMISSIONER OF THE STATE OF
CALIFORNIA,

Applicant,

v.

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

Respondents.

Case No. CPF-11-511261

**DECLARATION OF STEPHEN UNGAR
IN SUPPORT OF APPLICATION FOR
ORDER APPROVING
CONSERVATOR'S PROPOSAL TO
DISBURSE ASSETS TO APPROVED
CREDITOR AND TO APPROVE
SPECIAL PUBLICATION NOTICE
RELATING TO "GREAT WESTERN"
POLICIES**

**Date: July 8, 2014 (Res # 060414-04)
Time: 9:30 a.m.
Dept.: 302**

1 I, STEPHEN B. UNGAR, hereby declare as follows:

2 1. I am the Secretary and General Counsel of AmTrust North America, Inc. I have
3 held these positions since 2001. I make this declaration in support of Insurance Commissioner
4 Dave Jones' Application for Order Approving Conservator's Proposal to Disburse Assets to
5 Approved Creditor Claims and to Approve Special Publication Notice Relating to "Great
6 Western" Policies. The following facts are known by me to be true and correct and of my own
7 personal knowledge, except to those which I have expressed as being based upon my information
8 and belief, and if called upon to testify thereto I would and could competently do so.

9 2. Pursuant to the Rehabilitation Plan for Majestic Insurance Company, approved by
10 the Court on June 21, 2011, an affiliate of AmTrust entered into a Loss Portfolio Transfer and
11 Quota Share Reinsurance Agreement, by which it agreed (1) to fully reinsure and pay, without
12 any reduction or aggregate limit, all workers' compensation claims payable under Majestic's
13 policies, and (2) to reinsure and pay up to \$1 million in claims under some long-expired policies
14 issued between 1982 and 1984 when the company operated under the name Great Western
15 Insurance (the "Great Western Policies").

16 3. In the three years since the Rehabilitation Plan was approved, no insurance claims
17 have been made to AmTrust under any Great Western Policies, nor has AmTrust paid any claims
18 or defense costs under the Great Western Policies. AmTrust has received just one letter asking
19 for documents related to a policy. AmTrust diligently investigated that request, but was unable to
20 locate any documents. The inquiry has not resulted in a claim.

21 I declare under penalty of perjury under the laws of the State of California that the
22 foregoing is true and correct.

23
24 Dated: May 29, 2013



25 _____
26 Stephen B. Ungar
27
28

JUN - 5 2014

CLERK OF THE COURT

BY: BOWMAN LIU
Deputy Clerk

KAMALA D. HARRIS
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JOYCE E. HEE (State Bar No. 88610)
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Attorneys for Applicant Dave Jones,
Insurance Commissioner of the State of California
in his Capacity as Conservator of Majestic Insurance
Company

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

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

DAVE JONES, INSURANCE
COMMISSIONER OF THE STATE OF
CALIFORNIA,

Applicant,

v.

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

Respondents.

Case No. CPF-11-511261

**DECLARATION OF DAVID WILSON
IN SUPPORT OF APPLICATION FOR
ORDER APPROVING
CONSERVATOR'S PROPOSAL TO
DISBURSE ASSETS TO APPROVED
CREDITOR AND TO APPROVE
SPECIAL PUBLICATION NOTICE
RELATING TO "GREAT WESTERN"
POLICIES**

**Date: July 8, 2014 (Res # 060414-04)
Time: 9:30 a.m.
Dept.: 302**

1 I, DAVID E. WILSON, hereby declare as follows:

2 1. I am the Chief Executive Officer and Special Deputy Insurance Commissioner of
3 the Conservation & Liquidation Office ("CLO") of the California Department of Insurance
4 ("CDI") and have held this position since 2005, when I was appointed as CEO of the CLO by the
5 California Insurance Commissioner and confirmed by the California State Senate. I make this
6 declaration in support of Insurance Commissioner Dave Jones' Application for Order Approving
7 Conservator's Proposal to Disburse Assets to Approved Creditor Claims and to Approve Special
8 Publication Notice Relating to "Great Western" Policies. The following facts are known by me to
9 be true and correct and of my own personal knowledge, except to those which I have expressed as
10 being based upon my information and belief, and if called upon to testify thereto I would and
11 could competently do so.

12 2. On April 21, 2011, the Court issued its Order Appointing Conservator and
13 Restraining Orders (the "Conservation Order"). Pursuant to the Conservation Order, Majestic
14 Insurance Company ("Majestic") was placed in conservation, and California Insurance
15 Commissioner Dave Jones was authorized to act as conservator of Majestic ("Conservator").
16 Pursuant to the Conservator's authority under the Conservation Order, I was appointed as Deputy
17 Conservator for Majestic. A true and correct copy of the Conservation Order is attached hereto as
18 Exhibit A.

19 3. Later on April 21, 2011, the Commissioner (now acting in his capacity as
20 Conservator) filed an application to approve and authorize a Rehabilitation Plan for Majestic. In
21 the period immediately prior to these filings, the Commissioner had worked on the development
22 of the Rehabilitation Plan with Majestic's management and shareholder (Embarcadero Holdings),
23 and with AmTrust Financial Service, Inc. ("AmTrust"), an unaffiliated insurance group interested
24 in acting as the financial sponsor of the Rehabilitation Plan.

25 4. On June 2, 2011, after a full hearing, the Court approved the Commissioner's
26 application and entered the Rehabilitation Order. A true and correct copy of the Rehabilitation
27 Plan Approval Order is attached hereto as Exhibit B. Several weeks thereafter, the transactions
28 authorized under the Rehabilitation Plan were closed and the Plan became fully effective.

1 5. In broad terms, the Rehabilitation Plan was structured to comply with the statutory
2 priority scheme set forth in Insurance Code section 1033(a) for paying the claims and liabilities of
3 an insurance company undergoing conservation or liquidation. The priority scheme is relatively
4 simple:

5 Class 1: Expenses of administration.

6 Class 2: Policyholder claims. This priority – generally the largest class of liabilities
7 of an insurance company – includes the claims that arise from and within
8 the coverage and liability limits of the insurance company’s policy
9 obligations.

10 Classes 3-6: Other priority claims. For example, federal tax and priority claims (Class
11 3); regulatory fees to the Department of Insurance (Class 4); California tax
12 claims (Class 5) and other claims having priority under state law (Class 6)

13 Class 7: General creditor claims (all other types of non-priority claims)

14 Classes 8-9: Equity Claims. Claims based on stock ownership, or other forms of
15 investments that are payable only after all other creditors are paid.

16 6. The Rehabilitation Plan provided for the full payment of Class 2 policyholder
17 claims under Majestic’s workers’ compensation policies through a reinsurance agreement with
18 AmTrust, known as a *Loss Portfolio Transfer and Quota Share Reinsurance Agreement*
19 (“Reinsurance Agreement”). Under the Reinsurance Agreement, an affiliate of AmTrust agreed
20 (1) to fully reinsure and pay, without any reduction or aggregate limit, all workers’ compensation
21 claims payable under Majestic’s policies, and (2) to reinsure and pay up to \$1 million in claims
22 under some long-expired policies issued between 1982 and 1984 when the company operated
23 under the name Great Western Insurance (the “Great Western Policies”). The Conservator paid a
24 reinsurance premium to AmTrust in exchange for its agreement to provide this coverage of the
25 Class 2 claims. As an integrated part of that transaction, the Conservator also sold substantially
26 all of Majestic’s insurance operating assets to AmTrust.

27 7. After the closing of the reinsurance and asset sale transactions, including the
28 payment of the premium due under the Reinsurance Agreement that provided for satisfaction of

1 Class 2 claims, the Conservator retained approximately \$14.3 million to apply towards
2 satisfaction of Majestic's other liabilities.

3 8. Pursuant to the Rehabilitation Plan, all creditors were notified of their right to file
4 claims against Majestic prior to a specified claims bar date. After the bar date, the Conservator
5 received, reviewed, and made determinations on all of the claims to determine Majestic's liability
6 on claims with a priority below Class 2 (payment of Class 2 claims having been provided for
7 through the Reinsurance Agreement). That administrative work was completed during the latter
8 half of 2013, after which the Conservator developed a plan for making distributions on account of
9 Majestic's allowed creditor and equity claims.

10 9. On December 20, 2013, the Court granted the Conservator's Application to make a
11 distribution of assets to all approved creditors. A true and correct copy of the Court's Order is
12 attached hereto as Exhibit C. Pursuant to the Application and the Court's Order, the Conservator
13 made distributions of (1) 100% of the amount owned to Majestic's Class 7 allowed creditors,
14 together with statutory interest thereon (in the aggregate amount of \$2,028,839.41); and (2) a first
15 interim distribution of \$2,000,000 to the Embarcadero Liquidating Trust, Majestic's sole Class 9
16 creditor ("the Class 9 Creditor"). Those distributions were made in January and February 2014.

17 10. After the first interim distribution, the only remaining unpaid creditor of Majestic
18 is the Class 9 Creditor. The Conservator has, either through cash distributions or by making
19 provisions for future payments pursuant to the Reinsurance Agreement, fully satisfied all of the
20 known or reasonably anticipated policyholder priority claims, and all of the allowed general
21 creditor claims. There are no unpaid claims against Majestic creditors that have a higher priority
22 than the Class 9 Creditor. Thus, consistent with the priority scheme set forth in the Insurance
23 Code as incorporated into the Rehabilitation Plan, all residual assets of Majestic (after reasonable
24 reserves for taxes, if any, and the remaining expenses of administration for completing the
25 conservation and wind-up process) are available for orderly and timely distribution to the Class 9
26 Creditor or the duly appointed liquidating trustee thereof, Lloyd T. Whitaker (the "Liquidating
27 Trustee")—with one potential exception.

11. At the time of its conservation, Majestic operated as a “monoline” workers’ compensation insurance company – meaning that the only policies it issued and that remained in force were policies of workers’ compensation and employer liability insurance in California and approximately 17 other states in which Majestic was licensed. During 1982 through 1984, however, according to the best information available to the Conservator, Majestic (then operating under the name Great Western Insurance Company) issued general commercial liability policies to small businesses in California (“the Great Western Policies”). The insurance liabilities under the Great Western Policies were transferred to Golden Eagle Insurance Company in the mid-1980s, but more than a decade later Golden Eagle collapsed, and in 2006 Majestic resumed direct liability for any claims under the old Great Western Policies pursuant to a settlement agreement with the Golden Eagle liquidation estate.

12. The Commissioner again had to address potential claims under the Great Western Policies when Majestic was conserved in April 2011. Notwithstanding the fact that the Great Western Policies had expired nearly 30 years prior, and had given rise to few claims for coverage for occurrences arising during the periods the Great Western Policies were in force, in negotiating the Rehabilitation Plan and the Reinsurance Agreement with AmTrust, the Commissioner ensured that a specific provision was made in the Rehabilitation Plan to pay future claims that might arise and be properly payable under the Great Western Policies. However, given that neither Majestic nor Golden Eagle held any records relating to these policies, AmTrust was unwilling to reinsure claims under the Great Western Policies without establishing an aggregate limit (or “cap”) on the reinsurance coverage. Thus, unlike the *unlimited* reinsurance that covers claims under Majestic’s workers’ compensation policies, the reinsurance coverage for claims under the Great Western Policies is capped at an aggregate limit of \$1 million. This provision in the Reinsurance Agreement providing coverage for claims under the Great Western Policies will remain in effect unless or until claims under those policies reach or exceed the \$1 million aggregate limit.

13. The foregoing background relating to the Great Western Policies is important because the Conservator has determined that it is currently fair and reasonable to distribute a significant amount of the remaining assets of Majestic to the Class 9 Creditor, notwithstanding

1 the fact that those assets would otherwise be available to pay any claims under the Great Western
2 Policies *in excess* of the \$1 million of protection provided under the Reinsurance Agreement.
3 Because claims under the Great Western Policies are Class 2 policyholder claims, and because the
4 proposed distribution to the Class 9 Creditor will distribute assets that would otherwise be
5 available to pay contingent claims that may arise in the future, the Conservator proposes to make
6 the cash distribution to the Class 9 Creditor only after publishing a special notice that is designed
7 to notify prior Great Western policyholders that the distribution will be occurring. If the
8 publication notice results in the receipt of new claims under the Great Western Policies that
9 appear likely to exceed the \$1 million in coverage available from AmTrust under the Reinsurance
10 Agreement, the Conservator will not make the cash distribution to the Class 9 Creditor, and will
11 return to Court with a modified distribution plan. If no such claims are reported within forty-five
12 (45) days after the last publication, the Conservator will proceed with the cash distribution of \$5
13 million to the Class 9 Creditor. The amount of the proposed distribution is based on the
14 Conservator's assessment of the remaining administrative tasks associated with completing the
15 final accounting and other work necessary to file a final closing application to wind up the estate
16 and discharge the Conservator.

17 14. The Conservator proposes publishing the following legal notice in up to three
18 newspapers of general circulation in California, which is where Great Western wrote policies
19 during 1982 through 1984:

20 **To any person or business that purchased insurance from Great Western Insurance**
21 **Company ("Great Western") from 1982 through 1984.** Please take notice that your
22 rights to make claims and receive payment under insurance policies issued by Great
23 Western from 1982 through 1984 ("Great Western Policies") are being affected by legal
24 proceedings currently occurring in the Superior Court of the City and County of San
25 Francisco in a case entitled *Insurance Commissioner of the State of California v. Majestic*
26 *Insurance Company* (Case No. CPF-11-511261). Great Western Insurance, which was
27 renamed "Majestic Insurance Company" in 1986, was placed into statutory conservation
28 by the Insurance Commissioner in April 2011. In this proceeding, the Commissioner has
made reasonable, **but limited** provisions for the payment of claims under Great Western
Policies, and now intends to promptly distribute remaining assets to other creditors. It is
possible that the provision made for the payment of claims under Great Western Policies
may prove inadequate to pay future claims that are currently unknown and unreported,
and that the forthcoming distributions of assets to other creditors scheduled to occur in or
around August 2014 will mean that there are insufficient assets remaining to pay all future
claims under Great Western Policies. **If you were a policyholder under a Great**
Western Policy and believe that you suffered or may suffer a loss covered under the
Great Western Policy, you must report the claim immediately (nothing in this Notice

1 **shall operate as a waiver of any policy requirements relating to reporting a claim).**
2 If no material claims are reported to the Commissioner within forty-five (45) days after
3 the date of this publication, the Commissioner has been authorized by the Court to
4 proceed with distribution of Majestic's assets, and those assets will no longer be available
5 to pay future claims under the Great Western Policies. You may obtain additional
6 information about this proceeding and the proposed distribution to other creditors by
7 logging onto the website of the Insurance Commissioner's Conservation & Liquidation
8 Office at www.caclo.org. Information about Majestic and the Great Western Policies may
9 be obtained by clicking on the "Insolvent Companies" link, and then on "Majestic
10 Insurance Company." If you do not have access to the internet, please call the
11 Conservation & Liquidation Office at (415) 676-5000.

12 The Conservator believes that the foregoing notice and publication plan is reasonable under the
13 circumstances to notify any potential claimants under Great Western Policies of the proposed
14 distribution to the Class 9 Creditor. Given the absence of detailed books and records relating to
15 the Great Western Policies, the Conservator has no better alternative way in which to provide
16 notice to potential creditors regarding the Distribution Plan.

17 15. Finally, the Conservator's Distribution Plan discussed below contemplates the
18 immediate distribution (by way of assignment) of certain non-cash assets of Majestic to the Class
19 9 Creditor or the Liquidating Trustee, specifically, all rights, claims and causes of action that
20 Majestic or its conservation estate has or may have against any former directors, officers,
21 employees, agents, consultants, affiliates or subsidiaries of Majestic or any one or more of its
22 affiliates, arising from, relating to or in connection with his, her or its relationship with Majestic,
23 including but not limited to those for breach of fiduciary duty, aiding and abetting breach of
24 fiduciary duty, and gross negligence (the "D&O Claims"). The Conservator has determined that
25 because the only remaining unpaid creditor of Majestic is the Class 9 Creditor, and because
26 prosecution costs to pursue recovery on the D&O Claims will deplete assets that otherwise would
27 be distributed to the Class 9 Creditor, the most efficient manner in which to pursue recovery
28 would be to consolidate all such claims with the Class 9 Creditor. Thereafter, the Class 9
Creditor, acting by and through the Liquidating Trustee, may determine how best to prosecute the
D&O Claims and how much money to spend on that effort. The Conservator and the Class 9
Creditor, by the Liquidating Trustee, have negotiated agreements with the individuals against
whom the D&O Claims will likely be asserted, tolling the statutes of limitations potentially
applicable to the D&O Claims, but the most recent agreement is set to expire soon. The

1 Conservator desires to distribute and assign the D&O Claims to the Class 9 Creditor or the
2 Liquidating Trustee forthwith, upon the Court's approval of this Application.

3 I declare under penalty of perjury under the laws of the State of California that the
4 foregoing is true and correct.

5
6 Dated: June 3, 2013

7 David E. Wilson

8 David E. Wilson
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Exhibit A

ORIGINAL



FILED

San Francisco County Superior Court

APR 21 2011

CLERK OF THE COURT

BY: Jana Ingales Deputy Clerk

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JOYCE E. HEE
Supervising Deputy Attorney General
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Attorneys for Applicant
Insurance Commissioner of the State of California

SUPERIOR COURT OF THE STATE OF CALIFORNIA
CITY AND COUNTY OF SAN FRANCISCO – UNLIMITED JURISDICTION

**INSURANCE COMMISSIONER OF THE
STATE OF CALIFORNIA,**

Applicant,

v.

**MAJESTIC INSURANCE COMPANY, A
CALIFORNIA CORPORATION,**

Respondent.

Case No.: CPF-11-511261

**ORDER APPOINTING CONSERVATOR
AND RESTRAINING ORDERS
(PROPOSED)**

Date: April 21, 2011
Time: 11:00 a.m.
Dept.: 301

THE ANNEXED INSTRUMENT IS A
CORRECT COPY OF THE ORIGINAL
ON FILE IN MY OFFICE.
ATTEST CERTIFIED

APR 21 2011

BY: Dennis Toyama DEPUTY CLERK

The verified Application of the Insurance Commissioner of the State of California ("the Commissioner") having been filed herein, it being shown to the Court's satisfaction from said Application that the Commissioner has (1) found Majestic Insurance Company ("Majestic") to be in such condition that its further transaction of business will be hazardous to its policyholders, creditors, and the public; and (2) found that said insurer does not comply with the requirements for the issuance to it of a certificate of authority, and good cause appearing;

IT IS HEREBY ORDERED that:

1. The Commissioner is hereby appointed as Conservator (hereinafter "Conservator") of Majestic and directed to conduct the business of Majestic or so much thereof as he may deem

1 appropriate; and the Conservator is authorized, in his discretion, to pay or defer payment of some
2 or all proper claims, expenses, liabilities and obligations of Majestic, in whole or in part,
3 accruing prior or subsequent to his appointment as Conservator;

4 2. The Conservator is authorized to assume or reject, or to modify, any executory
5 contracts including without limitation, any lease, rental or utilization contract or agreement
6 (including any schedule to any such contract or agreement), and any license or other arrangement
7 for the use of computer software of business information systems, to which Majestic is a party or
8 as to which Majestic agrees to accept an assignment of such contract; the Conservator is directed
9 to effect any such assumption or rejection or modification of any executory contract not later than
10 120 days of the date of the Order Appointing Conservator, unless such date is extended by
11 application to and further order of this Court; all executory contracts that are not expressly
12 assumed by the Commissioner as Conservator shall be deemed rejected;

13 3. The Conservator is authorized to take possession of all of the assets of Majestic,
14 including books, records and property, both real and personal, accounts, safe deposit boxes, rights
15 of action, and all such assets as may be in the name of Majestic, wheresoever situated;

16 4. Title to all property and assets of Majestic, including deposits, securities, contracts,
17 rights of actions, books, records and other assets of every type and nature, and including both
18 those presently in Majestic's possession and those which may be discovered hereafter,
19 wheresoever situated, is vested in the Conservator or his successor in office, in his official
20 capacity as Conservator; the Conservator is authorized to deal with the same in his own name as
21 Conservator or in the name of Majestic, and all persons are enjoined from interfering with
22 Conservator's possession and title thereto;

23 5. The Conservator shall have all the powers of the directors, officers and managers
24 of Majestic, whose authorities are suspended except as such powers may be redelegated by the
25 Conservator;

26 6. The Conservator is authorized to terminate compensation arrangements with
27 employees, to enter into new compensation arrangements with employees, including
arrangements containing retention incentives, and the Conservator is authorized to hire employees



1 on such terms and conditions as he deems reasonable;

2 7. Except upon the express authorization of the Conservator, Majestic, its officers,
3 directors, agents and employees are enjoined from transacting any of the business of Majestic,
4 whether in the State of California or elsewhere, or from disposing of, using, transferring, selling,
5 assigning, canceling, alienating, hypothecating or concealing in any manner or any way, or
6 assisting any person in any of the foregoing, of the property or assets of Majestic or property or
7 assets in the possession of Majestic, of any nature or kind, including claims or causes of action,
8 until further order of this Court and further, such persons are enjoined from obstructing or
9 interfering with the Conservator's conduct of his or her duties as Conservator;

10 8. All persons are enjoined from instituting or prosecuting or maintaining any action
11 at law or suit in equity, including but not limited to actions or proceedings to compel discovery or
12 production of documents or testimony and matters in arbitration, except in matters before either
13 the California Workers Compensation Appeals Board or equivalent administrative boards or
14 organizations performing such functions in other States in which Majestic issued workers
15 compensation policies, against Majestic, or against Conservator and from attaching, executing
16 upon, redeeming of or taking any other legal proceedings against any of the property of Majestic,
17 and from doing any act interfering with the conduct of said business by Conservator, except after
18 an order from this Court obtained after reasonable notice to Conservator;

19 9. Majestic and all officers, directors, agents and employees of Majestic shall deliver
20 to, and immediately make available to, the Conservator all assets, books, records, accounts,
21 records, information, computers, tapes, discs, writings, other recordings of information,
22 equipment and other property of Majestic, wheresoever situated, in said persons custody or
23 control and further, the aforesaid persons shall disclose verbally, or in writing if requested by the
24 Conservator, the exact whereabouts of the foregoing items if such items are not in the possession
25 custody or control of said persons;

26 10. All officers, directors, trustees, employees or agents of Majestic, or any other
27 person, firm, association, partnership, corporate parent, holding company, affiliate or other entity
28 in charge of any aspect of Majestic's affairs, either in whole or in part, and including but not



1 limited to banks, savings and loan associations, financial or lending institutions, brokers, stock or
2 mutual associations, or any parent, holding company, subsidiary or affiliated corporation or any
3 other representative acting in concert with Majestic, shall cooperate with the Conservator in the
4 performance of his or her duties.

5 11. The Conservator is authorized to pay all reasonable costs of taking possession of
6 and conserving Majestic (including but not limited to the Conservator's pre-conservation costs in
7 examining Majestic's financial condition, and preparing to take possession and conserve
8 Majestic) out of the funds and assets of the Majestic;

9 12. The Conservator is authorized to pay all reasonable costs of operating Majestic as
10 Conservator (including direct and allocated direct costs, direct and allocated general and
11 administrative costs and overhead, and all other allocated costs) out of any and all funds and
12 assets of Majestic; and if there are insufficient funds, to pay for the costs out of the Insurance
13 Fund pursuant to Insurance Code section 1035;

14 13. All funds and assets, including certificates of deposit, bank accounts, and mutual
15 fund shares of Majestic, in various financial depository institutions, including banks, savings and
16 loan associations, industrial loan companies, mutual funds or stock brokerages, wheresoever
17 situated, shall be vested in the Conservator and subject to withdrawal upon his order only;

18 14. All persons who maintain records for Majestic, pursuant to written contract or any
19 other agreement, shall maintain such records and deliver to the Conservator such records upon his
20 request;

21 15. All agents of Majestic, and all brokers who have done business with Majestic,
22 shall make all remittances of all funds collected by them or in their hands directly to the
23 Conservator;

24 16. All persons having possession of any lists of policyholders or escrow holders of
25 Majestic shall deliver such lists to the Conservator; and that all persons are enjoined from using
26 any such lists or any information contained therein without the consent of the Conservator;

27 17. The Conservator is authorized to initiate such equitable or legal actions or
proceedings in this or other states as may appear to him necessary to carry out his functions as



1 Conservator;

2 18. The Conservator is authorized to appoint and employ special deputies, estate
3 officers and managers, other professionals, clerks and assistants and to give each of them such
4 power and authority as may be deemed necessary by him, and the Conservator is authorized to
5 compensate these persons from the assets of Majestic as he shall deem appropriate. David E
6 Wilson, Special Deputy Commissioner, is hereby appointed as Deputy Conservator, empowered
7 to carry out any and all duties and exercise the authority of the Conservator granted herein and in
8 the Insurance Code. Joe Holloway is hereby appointed as Conservation Manager, empowered to
9 carry out any and all duties and exercise the authority of the Conservator or the Deputy

10 Conservator, as may be delegated in writing by the Conservator or Deputy Conservator;

11 19. The Conservator is authorized to divert, take possession of and secure all mail of
12 Majestic, in order to screen such mail, and to effect a change in the rights to use any and all post
13 office boxes and other mail collection facilities used by Majestic;

14 20. Majestic and its officers, directors, agents, servants, employees, successors,
15 assigns, affiliates, and other persons or entities under their control and all persons or entities in
16 concert or participation with Majestic, and each of them, shall turn over to the Conservator all
17 records, documentation, charts and/or descriptive materials of all funds, assets, property (owned
18 beneficially or otherwise), and all other assets of Majestic wherever situated, and all books and
19 records of accounts, title documents and other documents in their possession or under their
20 control, which relate, directly or indirectly to assets or property owned or held by Majestic or to
21 the business or operations of Majestic;

22 21. Except with leave of court issued after a hearing in which the Conservator has
23 received reasonable notice, all persons are enjoined from obtaining preferences, judgments,
24 attachments or other liens, or making any levy against Majestic or its assets or property, and from
25 executing or issuing or causing the execution or issuance of any court attachment, subpoena,
26 replevin, execution or other process for the purpose of impounding or taking possession of or
27 interfering with or creating or enforcing a lien upon any property or assets owned or in the
possession of Majestic or Conservator, wheresoever situated, and from doing any act interfering

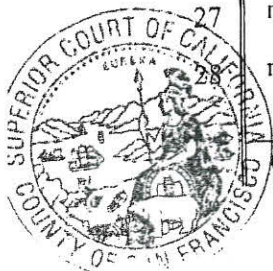


1 with the conduct of said business by Conservator;

2 22. Except with leave of court issued after a hearing in which Conservator has
3 received reasonable notice, all persons are enjoined from accelerating the due date of any
4 obligation or claimed obligation; exercising any right of set-off; taking, retaining, retaking or
5 attempting to retake possession of any real or personal property; withholding or diverting any rent
6 or other obligation; doing any act or other thing whatsoever to interfere with the possession of or
7 management by Conservator of the property and assets, owned or controlled by Majestic or in the
8 possession of Majestic or in any way interfering with Conservator or interfering in any manner
9 during the pendency of this proceeding with the exclusive jurisdiction of this Court over Majestic;

10 23. Any and all provisions of any agreement entered into by and between any third
11 party and Majestic, including by way of illustration, but not limited to, the following types of
12 agreements (as well as any amendments, assignments, or modifications thereto); financial
13 guarantee bonds, promissory notes, loan agreements, security agreements, deeds of trust,
14 mortgages, indemnification agreements, subrogation agreements, subordination agreements,
15 pledge agreements, assignments of rents or other collateral, financial statements, letters of credit,
16 leases, insurance policies, guaranties, escrow agreements, management agreements, real estate
17 brokerage and rental agreements, servicing agreements, attorney agreements, consulting
18 agreements, easement agreements, license agreements, franchise agreements, or employment
19 contracts that provide in any manner that selection, appointment or retention of a conservator,
20 receiver or trustee by any court, or entry of any order such as hereby made, shall be deemed to be,
21 or otherwise operate as, a breach, violation, event of default, termination, event of dissolution,
22 event of acceleration, insolvency, bankruptcy, or liquidation shall be stayed, and the assertion of
23 any and all rights and remedies relating thereto shall also be stayed and barred, except as
24 otherwise ordered by this Court, and this Court shall retain jurisdiction over any cause of action
25 that has arisen or may otherwise arise under any such provision;

26 24. The Conservator is authorized to invest Majestic's assets and funds in such a
27 manner as to him may seem suitable for the best interest of Majestic's creditors, which funds are
28 not immediately distributable to Majestic's creditors. However, no investment or reinvestment



1 shall be made exceeding the sum of \$100,000 without first obtaining permission of this Court,
2 except the Conservator may make investments or reinvestments in excess of \$100,000 without
3 prior approval if such investments or reinvestments are made pursuant to the investment
4 guidelines of the Conservator's Conservation & Liquidation Office, a true and correct copy of
5 which is attached hereto as Exhibit A and incorporated herein by this reference. The Conservator
6 shall file quarterly reports of such investments in excess of \$100,000 with the Court, with notice
7 to all persons on the service list, such reports to be filed within 60 days of the end of each quarter;

8 25. The Conservator is authorized to pay for his costs and fees in bringing and
9 maintaining this action, and such other actions as are necessary to carry out his functions as

10 Conservator, out of the funds and assets of Majestic; and

11 26. All persons are enjoined from the waste of the assets of Majestic.

12
13 Dated: 4/21/11

Peter J. Busch
Judge of the Superior Court

PETER J. BUSCH



INSURANCE COMMISSIONER of the
STATE of CALIFORNIA
CONSERVATION & LIQUIDATION OFFICE
INVESTMENT GUIDELINES

Objectives

To maintain safety of principal and to maximize available yield while assuming a minimum of risk through a balance of quality and diversification within the investment portfolio.

A. Safety

Quality

None of the Portfolio will be invested in fixed income securities rated below investment grade quality by Standard & Poor's, Moody's or by another nationally recognized statistical rating organization. Unrated securities may not be held. The minimum average market value weighted credit quality of securities in the Portfolio will be AA- by Standard & Poor's and Aa3 by Moody's or their equivalent.

Commercial Paper will be rated no less than A1 by Standard & Poor's or P1 by Moody's.

Sectors

Permitted investments for the Portfolio shall include:

1. Fixed income securities and other fixed income obligations of any type which may be issued or guaranteed by (i) the U.S. and the agencies, instrumentalities, and political sub-divisions of the U.S., and (ii) U.S. corporations, trusts and special purpose entities. Such securities must be traded on exchanges or in over the counter markets in the U.S. No emerging markets' securities are allowed.
2. Repurchase agreements.

1
EXHIBIT A

Restrictions on permitted investments

None of the Portfolio may be invested in foreign securities and in securities not denominated in U.S. dollars. Manager may not elect to hedge currency and/or interest rate exposure. No speculative currency positions are permitted.

All repurchase agreements will be transacted with counterparties approved by the Manager in accordance with its policies and procedures and terms and conditions set forth in the applicable Investment Management Agreement and any applicable Master Repurchase Agreement(s).

No investment in interest only ("IO"), principal only ("PO"), or inverse floater CMOs are permitted. The manager should only accept reasonable prepayment risk, consistent with the stated objectives of their respective funds.

Derivatives, or financial investments containing derivatives, are not permitted, defined as options, forwards, futures and swaps.

Investment transactions (i) which result in leverage or short sales and/or (ii) with affiliates of the Manager, are not permitted.

Diversification

No more than 5 % of the Portfolio will be invested in the securities of any one issuer, other than those securities issued or guaranteed by the U.S. government, its agencies, and instrumentalities and refunded municipal issues (all of which may be held without limit). For the purposes of this guideline, asset backed and mortgage-related securities (not issued by the U.S. Government, its agencies or instrumentalities), issued by trusts and other special purpose entities, will be limited to no more than 5 percent per issue, in addition to a common originator limit of no more than 20 percent.

B. Maturity

Portfolio duration will be maintained within a range of (+/-) twelve months of Barclays Capital US Government/Credit 1-3 Yr ex Baa (the Index) under normal market conditions. There will be no restriction on the duration of any single security. Duration will be calculated adjusting for any optionality in

securities as well as adjusting for the expected prepayment level of mortgage-backed security pools.

C. Calculation of Returns

Returns will be calculated in compliance with the Association for Investment Management and Research standards.

D. General

All percentage restrictions on Portfolio holdings will initially be evaluated at the time of purchase. At any time thereafter, concentrations in eligible portfolio investments will not exceed the prescribed limit by more than one percent.

Notwithstanding any provision to the contrary, Manager will not be required to sell any particular holding because a rating of a security is downgraded subsequent to purchase. However, Manager is required to notify the client in the event of a downgrade below investment grade. In the event a security is split rated, the lower rating will apply with respect to all portfolio percentage and quality restrictions.

Investment personnel who will have input into or control over any investment decision on behalf of the Commissioner are required, if they have a beneficial interest in that security, to disclose in writing their beneficial interest and receive written authority from the Commissioner before an investment decision is made.

E. Benchmark

The benchmark for the Portfolio will be the Barclays Capital US Government/Credit 1-3 Yr ex Baa or better, (the "Index"). The objective of the Portfolio will be to maintain safety of principal and maximize available yield while assuming a minimum of risk through a balance of quality and diversification within the portfolio.

Exhibit B

COPY

KAMALA D. HARRIS
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Attorneys for Applicant Dave Jones,
Insurance Commissioner of the State of California
In his Capacity as Conservator of
Majestic Insurance Company

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

DAVE JONES, INSURANCE
COMMISSIONER OF THE STATE OF
CALIFORNIA,

Applicant,

v.

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

Respondents.

Case No. CPF-11-511261

**[PROPOSED] ORDER APPROVING
REHABILITATION PLAN**

Date: June 2, 2011
Time: 9:30 a.m.
Dept: 301
Judge: Hon. Peter J. Busch

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

This Court, having considered the Motion for an Order Approving Rehabilitation Plan for
Majestic Insurance Company ("Majestic")¹ of Insurance Commissioner Dave Jones, as

¹ All capitalized terms, to the extent not defined in this Order, have the meanings set forth in the Motion.

1 Conservator of Majestic; having conducted a hearing on June 2, 2011, to consider the Motion for
2 Order Approving the Rehabilitation Plan (the "Hearing"); having considered the pleadings, filings
3 and evidence in this proceeding, including all matters and information adduced by the
4 Conservator in support of the Rehabilitation Plan; having considered all objections and comments
5 provided by persons interested in the Rehabilitation Plan, including the New York State Workers'
6 Compensation Board's Objection to the Proposed Rehabilitation Plan for Majestic Insurance
7 Company and the Plaintiffs Contractors' Objection to Rehabilitation Plan for Majestic Insurance
8 Company; the matter having been fully argued, briefed and submitted and GOOD CAUSE
9 appearing therefor:

10 **IT IS THEREFORE FOUND, DETERMINED AND ORDERED AS FOLLOWS:**

11 **Notice, Opportunity to be Heard and Consent to Jurisdiction**

12 1. The Conservator has provided proper, timely and adequate notice of the Hearing,
13 the Motion and all related matters to all parties entitled to such notice, including policyholders,
14 contract holders, creditors, the shareholder of Majestic and all other interested parties entitled to
15 notice.

16 2. All interested persons had a full and fair opportunity to present any comments,
17 suggestions, objections or other matters relating to the Rehabilitation Plan as detailed in the
18 Conservator's Motion and the documents filed in support thereof.

19 3. All persons and entities filing objections have consented to the exclusive
20 jurisdiction of the Court on matters relating to Majestic and its assets.

21 **Overruling of Objections and Approval of Rehabilitation Plan**

22 4. All objections to the Rehabilitation Plan are hereby overruled.

23 5. Based upon the Motion and the evidence adduced in support thereof, this Court
24 finds that the Rehabilitation Plan, the Rehabilitation Agreement, and the accompanying
25 Rehabilitation Transaction Agreements are fair, just and equitable to policyholders, creditors and
26 the shareholder of Majestic, as well as other interested parties, and do not discriminate unfairly in
27 favor of or against any class of policyholder, creditor or shareholder.

28 ///

1 6. All provisions of the Rehabilitation Plan are within the sound discretion of the
2 California Insurance Commissioner acting as Conservator of Majestic. No provision of the
3 Rehabilitation Plan, Rehabilitation Agreement or Rehabilitation Transaction Agreements
4 referenced therein violates any requirement of law and all requirements of due process have been
5 met.

6 7. The Rehabilitation Plan and its accompanying Rehabilitation Transaction
7 Agreements are hereby fully and finally approved and enforceable in accordance with the
8 foregoing and in accordance with their provisions, said provisions being hereby incorporated into
9 this Order Approving Rehabilitation Plan.

10 8. All transactions contemplated by the Rehabilitation Plan, Rehabilitation
11 Agreement and Rehabilitation Transaction Agreements may be immediately consummated,
12 closed or performed upon entry of this Order. The Conservator and the respective parties to the
13 foregoing agreements are hereby authorized to do all acts and sign all ancillary agreements and
14 other documents reasonably necessary to close the transactions contemplated by such agreements,
15 including, but not limited to, the transfer of assets, the execution of bills of sale, execution of
16 documents of title, the entry into contracts and the payment of such fees and expenses as may be
17 necessary or appropriate to the closing of the contemplated transactions. The Conservator is
18 expressly authorized to take all actions, pay all expenses and execute all documents he deems
19 necessary or appropriate in order to effectuate the consummation of the transactions contemplated
20 by and approved in this Order without further approval of this Court. To the extent the
21 Conservator believes it to be necessary, he may negotiate and propose modifications to the Court
22 with respect to Rehabilitation Plan which are consistent with the intent and spirit of the
23 Rehabilitation Plan.

24 9. All other provisions of the Motion, to which reference is hereby made for further
25 detail, are hereby found to be reasonable and are in all things approved.

26 **Continuing Jurisdiction of the Court and Continuation of Injunctions**

27 10. All executory portions of the Rehabilitation Transaction Agreements are also
28 hereby approved and made valid in the event of a future insolvency of Majestic.

1 11. This Court shall retain jurisdiction of this action to supervise the implementation
2 of the Rehabilitation Plan, to resolve disputes in the manner provided for in the Rehabilitation
3 Plan, to adjudicate all third party claims, to make any orders or findings necessary to implement
4 this Order or the Rehabilitation Plan.

5 12. All prior injunctions and other orders of this Court, except to the extent expressly
6 modified herein, are reaffirmed and remain in full force and effect. All powers and authority
7 granted to the Conservator by this Order are in addition to and not in limitation of the powers of
8 the Conservator under the California Insurance Code and the applicable case law.

9 13. The Conservator is expressly authorized to do all things necessary or appropriate
10 to carry out the provisions of the Rehabilitation Plan, Rehabilitation Agreement and
11 Rehabilitation Transaction Agreements.

12 14. All third parties, including, without limitation, banks, savings and loan
13 associations, depositories, custodians, securities issuers, third party lenders or mortgage holders,
14 landlords and transfer agents, are instructed to use their best efforts and to cooperate with the
15 Conservator to ensure that the asset transfers authorized herein are accomplished.

16 **Provisions Regarding Majestic in Conservation**

17 15. This Order is not an order of liquidation for Majestic. The Conservator may seek
18 an order to liquidate Majestic at such time as the Conservator determines such liquidation is
19 advisable. Such application for an order of liquidation shall be made to this Court, and may be
20 made on an *ex parte* basis, subject to subsequent notice and a hearing before this Court.

21 16. The California Insurance Guarantee Association's obligations and the obligations
22 of similar guaranty associations in other states (which guaranty associations shall be collectively
23 referred to as "CIGA") shall not be affected by this Order.

24 17. The Conservator is authorized to use the assets of Majestic to satisfy liabilities of
25 Majestic not assumed by AmTrust North America, Inc. ("AmTrust") or an affiliate of AmTrust
26 pursuant to the Rehabilitation Agreement or Rehabilitation Transaction Agreements, in the order
27 of priority established in Insurance Code Section 1033.

28 ///

1 18. Except for those liabilities expressly assumed by AmTrust or an affiliate of
2 AmTrust under the Rehabilitation Agreement or the Rehabilitation Transaction Agreements, all
3 liabilities of Majestic of any kind or nature shall be retained by Majestic ("Retained Liabilities").
4 All persons are hereby expressly enjoined from asserting or prosecuting in any legal proceeding
5 against AmTrust or its affiliates any claim ^{based on a liability of Majestic} arising out of the management or operations of
6 Majestic Insurance Company or its affiliates prior to the closing of the transactions contemplated
7 by the Rehabilitation Agreement and the Rehabilitation Transaction Agreements. Holders of
8 claims based on any Retained Liabilities shall have recourse only to the assets of Majestic, in
9 accordance with the statutory priorities under Section 1033.

10 19. All claims against Majestic based on Retained Liabilities shall be presented after
11 entry of this Order and closing of the Rehabilitation Plan in accordance with instructions to be
12 provided by the Conservator and the Court.

13 20. In the event a claim against Majestic is rejected, either in whole or in part, the
14 claimant shall have recourse to this Court through an order to show cause proceeding as set forth
15 in section 1032 of the California Insurance Code, subject to the time deadlines set forth therein.

16 **Service and Publication of Order**

17 21. This Order shall be served on all parties who have requested service herein and on
18 such other persons as the Conservator deems appropriate, and shall be published in the same
19 manner as prescribed for notice of this Hearing.

20
21 Dated: June 2, 2011

22 By: PETER J. BUSCH
23 HON. PETER J. BUSCH
24 JUDGE OF THE SUPERIOR COURT

25 OHS WEST:261129327.1
26
27
28

Exhibit C

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7 *Attorneys for Applicant Dave Jones,*
8 *Insurance Commissioner of the State of California*

ENDORSED
FILED
Superior Court of California
County of San Francisco

DEC 20 2013

CLERK OF THE COURT

BY: LINDA FONG
Deputy Clerk

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF SAN FRANCISCO

11
12
13 **DAVE JONES, INSURANCE**
14 **COMMISSIONER OF THE STATE OF**
15 **CALIFORNIA,**

Applicant,

16 v.

17
18 **MAJESTIC INSURANCE COMPANY, and**
19 **DOES 1-50, inclusive,**

20 Respondents.

Case No. CPF-11-511261

**[PROPOSED] ORDER APPROVING
CONSERVATOR'S PROPOSAL TO
DISBURSE ASSETS TO ALL APPROVED
CREDITORS**

Date: December 20, 2013
Time: 9:30 a.m.
Dept: 302

21 California Insurance Commissioner Dave Jones ("Conservator"), as Conservator of
22 Majestic Insurance Company ("Majestic") has applied for an Order approving the Conservator's
23 Application to disburse the assets of Majestic to all of its approved Insurance Code section
24 1033(a)(7) creditors, and to approved Insurance Code section 1033(a)(9) shareholders and other
25 owners, in accordance with the Insurance Code section 1037 powers of the Insurance
26 Commissioner as Conservator. The Court having considered the Conservator's Application and
27
28

1 the Declaration of David Wilson in support of the Conservator's Application, and good cause
2 appearing therefore:

3 **IT IS ORDERED that:**

4 1. The Conservator of Majestic Insurance Company is authorized to distribute and
5 pay to the section 1033(a)(7) claimants as set forth in his Application a total of \$2,028,839.41,
6 together with interest at the legal rate from the date of each claim's approval to the date of entry
7 of this Court's order, from the assets of Majestic Insurance Company; and

8 2. The Conservator of Majestic Insurance Company is authorized to distribute and
9 pay a total of \$2,000,000.00 to Embarcadero Liquidating Trust as a section 1033(a)(9) claimant,
10 and

11 3. The Conservator of Majestic Insurance Company is authorized to take any and all
12 actions necessary to accomplish the purposes of this Order.

13
14
15 Dated: DEC 20 2013, 2013.

MARLA J. MILLER

Judge of the Superior Court

MARLA J. MILLER

1 Class 2 claims, the Conservator retained approximately \$14.3 million to apply towards
2 satisfaction of Majestic's other liabilities.

3 8. Pursuant to the Rehabilitation Plan, all creditors were notified of their right to file
4 claims against Majestic prior to a specified claims bar date. After the bar date, the Conservator
5 received, reviewed, and made determinations on all of the claims to determine Majestic's liability
6 on claims with a priority below Class 2 (payment of Class 2 claims having been provided for
7 through the Reinsurance Agreement). That administrative work was completed during the latter
8 half of 2013, after which the Conservator developed a plan for making distributions on account of
9 Majestic's allowed creditor and equity claims.

10 9. On December 20, 2013, the Court granted the Conservator's Application to make a
11 distribution of assets to all approved creditors. A true and correct copy of the Court's Order is
12 attached hereto as Exhibit C. Pursuant to the Application and the Court's Order, the Conservator
13 made distributions of (1) 100% of the amount owned to Majestic's Class 7 allowed creditors,
14 together with statutory interest thereon (in the aggregate amount of \$2,028,839.41); and (2) a first
15 interim distribution of \$2,000,000 to the Embarcadero Liquidating Trust, Majestic's sole Class 9
16 creditor ("the Class 9 Creditor"). Those distributions were made in January and February 2014.

17 10. After the first interim distribution, the only remaining unpaid creditor of Majestic
18 is the Class 9 Creditor. The Conservator has, either through cash distributions or by making
19 provisions for future payments pursuant to the Reinsurance Agreement, fully satisfied all of the
20 known or reasonably anticipated policyholder priority claims, and all of the allowed general
21 creditor claims. There are no unpaid claims against Majestic creditors that have a higher priority
22 than the Class 9 Creditor. Thus, consistent with the priority scheme set forth in the Insurance
23 Code as incorporated into the Rehabilitation Plan, all residual assets of Majestic (after reasonable
24 reserves for taxes, if any, and the remaining expenses of administration for completing the
25 conservation and wind-up process) are available for orderly and timely distribution to the Class 9
26 Creditor or the duly appointed liquidating trustee thereof, Lloyd T. Whitaker (the "Liquidating
27 Trustee")—with one potential exception.

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11 *Attorneys for Applicant*
12 *Dave Jones, Insurance Commissioner of the State of*
California in his Capacity as Conservator of
13 *Majestic Insurance Company*

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
15 COUNTY OF SAN FRANCISCO
16 CIVIL DIVISION
17

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

21 Applicant,

22 v.

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

25 Respondents.
26
27
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ENDORSED
FILED
Superior Court of California
County of San Francisco

JUN - 5 2014

CLERK OF THE COURT

BY: BOWMAN LIU
Deputy Clerk

Case No. CPF-11-511261

DECLARATION OF SERVICE

DECLARATION OF SERVICE

Case Name: Dave Jones, Insurance Commissioner of the State of California v. Majestic Insurance Company, and Does 1-50-inclusive

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 mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

On June 5, 2014, I served the attached:

1. **NOTICE OF APPLICATION AND APPLICATION FOR ORDER APPROVING CONSERVATOR'S PROPOSAL TO DISBURSE ASSETS TO APPROVED CREDITOR AND TO APPROVE SPECIAL PUBLICATION NOTICE RELATING TO 'GREAT WESTERN' POLICIES;**
2. **DECLARATION OF DAVID WILSON IN SUPPORT OF APPLICATION FOR ORDER APPROVING CONSERVATOR'S PROPOSAL TO DISBURSE ASSETS TO APPROVED CREDITOR AND TO APPROVE SPECIAL PUBLICATION NOTICE RELATING TO "GREAT WESTERN" POLICIES;**
3. **DECLARATION OF KEVIN MCGRATH IN SUPPORT OF APPLICATION FOR ORDER APPROVING CONSERVATOR'S PROPOSAL TO DISBURSE ASSETS TO APPROVED CREDITOR AND TO APPROVE SPECIAL PUBLICATION NOTICE RELATING TO "GREAT WESTERN" POLICIES;**
4. **DECLARATION OF STEPHEN UNGAR IN SUPPORT OF APPLICATION FOR ORDER APPROVING CONSERVATOR'S PROPOSAL TO DISBURSE ASSETS TO APPROVED CREDITOR AND TO APPROVE SPECIAL PUBLICATION NOTICE RELATING TO "GREAT WESTERN" POLICIES;**
5. **[PROPOSED] ORDER APPROVING CONSERVATOR'S PROPOSAL TO DISBURSE ASSETS TO APPROVED CREDITOR AND TO APPROVE SPECIAL PUBLICATION NOTICE RELATING TO "GREAT WESTERN" POLICIES;**

by placing a true copy thereof enclosed in a sealed envelope in the internal mail collection system at the Office of the Attorney General at 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102-7004, addressed as follows:

SEE ATTACHED SERVICE LIST

I declare under penalty of perjury under the laws of the State of California the foregoing is true

1 and correct and that this declaration was executed on June 5, 2014, at San Francisco, California.
2
3

4 Danielle Bouilly-Chinn

Signature 

SERVICE LIST

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