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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
10 **CITY AND COUNTY OF SAN FRANCISCO**

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

15 Applicant,

16 vs.

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

19 Respondents.

CASE NO. CPF-11-511261

PLAINTIFFS CONTRACTORS'  
OBJECTION TO REHABILITATION  
PLAN FOR MAJESTIC INSURANCE  
COMPANY

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

20 COMES NOW Plaintiffs Mark Tanner Construction, Inc., Doc Gelso Construction, Inc.,  
21 Mt. Lincoln Construction, Inc., and Sierra Paint & Chemical, Inc., (collectively hereinafter  
22 "Contractors") present their opposition to the Rehabilitation Plan for Majestic Insurance  
23 Company.

24 **FACTUAL BACKGROUND**

25 The Contractors were each members of a worker's compensation self-insurance program,  
26 Contractors Access Program of California ("CAP") from 2005 to 2009. This program,  
27 Contractors believe, was organized, managed, and ultimately caused to fail as a result of the  
28 actions of the several individual and other legal entities including MAJESTIC INSURANCE

1 COMPANY, which profited from CAP and other self-insured worker's compensation program  
2 enterprises established in California and other states. The Complaint in the action *Mark Tanner*  
3 *Construction, Inc., et al. v. Majestic Capital LTD et al., San Francisco Superior Court, Case No.*  
4 *CGC-11-507678* is attached hereto as Exhibit A and the allegations contained are incorporated  
5 herein.

6 This Conservatorship follows the filing of the Contractors action, a similar action in  
7 Superior Court of Orange County and an action on behalf of CAP brought by the Department of  
8 Industrial Relations.<sup>1</sup> While the moving papers to approve the Rehabilitation Plan mentions the  
9 tough economic conditions, increase in claims and an action in New York arising out of similar  
10 SIPs as the reason for the Conservator and Rehabilitation, it seems that MAJESTIC  
11 INSURANCE COMPANY's involvement and subsequent litigation in California has contributed  
12 as well as the siphoning of funds by the individuals and entities which created, maintained, and  
13 finally allowed to fail the SIPs and ultimately MAJESTIC INSURANCE COMPANY. The  
14 several financial reports which go back to 2003 establish that while CRM created SIPs were  
15 failing, CRM, the circle of individuals involved in the ponzi-type scheme, and the supposed  
16 subsidiaries of CRM, were all doing just fine. For example, in the CAP program, CRM prepared  
17 an accounting which on its face indicated that prior to voluntarily going into receivership  
18 MAJESTIC INSURANCE COMPANY owed approximately \$10.2 million to CAP as unearned  
19 premiums. These same accounting sheets provide information as to how much CRM,  
20 MAJESTIC INSURANCE COMPANY, and other subsidiaries, were taking out of CAP. In the  
21 end, if the State of California, Department of Industrial Relations and the Department of  
22 Insurance, had performed as required by law, and if the Conservator were to go after the money  
23 trail, these objectors posit that the reorganization would be unnecessary. The failing economy  
24 and the New York actions are not the cause of the problems in California.

25 According to Mr. Wilson's Declaration in support of the Conservator's motion,  
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27 <sup>1</sup> *Contractors Access Program of California v. Majestic Capital, Ltd.*, Case No. CGC-  
28 10-506422, S.F. Superior Court; *California Plastering, Inc. v. Pridemark-Everest Insurance*  
*Services, Inc.*, Case No. 30-2010-420488, Orange County Superior Court.

1 MAJESTIC INSURANCE COMPANY is a member of an insurance holding company system .  
2 MAJESTIC INSURANCE COMPANY's immediate parent is Embarcadero Insurance Holding,  
3 Inc. Embarcadero is a wholly owned subsidiary of Majestic USA Capital, Inc, which is wholly  
4 owned by the ultimate parent, MAJESTIC CAPITAL, LTD. (Wilson Declaration paragraph 4.)

5 MAJESTIC INSURANCE COMPANY was represented as the provider of additional/  
6 excess insurance for CAP as well as the reinsurer for the program overall. While Contractors  
7 have not yet been provided with copies of the various insurance policies, the statements and  
8 documents provided by CRM indicate that such coverage was provided. MAJESTIC  
9 INSURANCE COMPANY has not provided any payment of any claims under its obligations as  
10 an excess insurer or as the reinsurer of CAP yet has retained unearned premiums which have  
11 apparently not been accounted for.

12 Apparently, MAJESTIC INSURANCE COMPANY has been used, with the purported  
13 approval of the California Department of Insurance, to allocate expenses from the domestic  
14 holding companies to MAJESTIC INSURANCE COMPANY. *See, e.g.*, form 10-Q filed for the  
15 quarterly period ended September 30, 2010, by CRM Holdings, Ltd..

16 Finally, TWIN BRIDGES, an excess insurer for CAP, made substantial distributions of  
17 surplus to the parent company in 2010. *Id.* TWIN BRIDGES and MAJESTIC INSURANCE  
18 COMPANY were funding the parent company while at the same time, at least as to MAJESTIC  
19 INSURANCE COMPANY, losing money on paper to the jeopardy of its insureds and injured  
20 workers in the state.

21 Finally of relevance is the fact that AMTRUST has apparently been involved in the  
22 business activities of MAJESTIC INSURANCE COMPANY since at least 2008. The full extent  
23 of that involvement is unknown to Contractors. In the end, MAJESTIC INSURANCE  
24 COMPANY OWES a duty to CAP members to provide the reinsurance advertised and to  
25 reimburse CAP and its members for the unearned premiums which apparently have been  
26 transferred to the CRM parent. As it now is structured, the CAP members will be possibly held  
27 liable for the wrongdoing of MAJESTIC INSURANCE COMPANY and the individuals and  
28 entities who profited from the Ponzi-type scheme, AMTRUST will benefit significantly without

1 assuming any detriment, and the State of California will rid itself of an embarrassment which, if  
2 the regulatory bodies had done their jobs, would never have arisen.

3 **OBJECTIONS**

4 Contractors object to the Rehabilitation Plan. From Contractors' perspective the  
5 Rehabilitation Agreement appears to be a transfer of assets from MAJESTIC INSURANCE  
6 COMPANY to AMTRUST, assets which Contractors believe were achieved in part by its  
7 wrongful acts leaving the Contractors with hundreds of thousands of dollars or workers  
8 compensation liability resulting from the failed CAP. The Rehabilitation Agreement does not  
9 account for the pending litigation by Contractors and others in California and the obligations of  
10 MAJESTIC INSURANCE COMPANY to former members of CAP.

11 Contractors specifically object to the Rehabilitation Agreement Section 7, Renewal  
12 Rights and Asset Purchase Agreement Section 2.9, expressly excluding AMTRUST from any of  
13 MAJESTIC INSURANCE COMPANY's liability. Generally, a contract requires detriment on  
14 each side of the agreement. In this case, AMTRUST is not subject to any detriment.

15 Contractors object to Article 5 of the Renewal Rights and Asset Purchase Agreement  
16 titled Profit Sharing in conjunction with Article 9 section 9.7 which provides that the current  
17 consideration provided by AMTRUST is inadequate to pay the costs of the conservator to  
18 finalize the Rehabilitation Agreement. Since the assets of MAJESTIC which will remain after  
19 closing of the agreement are insufficient to even close the agreement, it seems apparent that none  
20 of the non-policyholder claims that exist, including Contractors, will receive any payment.

21 Contractors request that the agreement be amended or changed to account for some  
22 recovery of non-policyholder claims. Further, it would seem only appropriate that before the  
23 State of California lets the CRM entities and individuals off the hook for facially running  
24 MAJESTIC INSURANCE COMPANY into the ground, the State should attempt to recover  
25 assets which were nothing more than part of a scheme. This would provide protection for  
26 California individuals and entities. To simply act like MAJESTIC INSURANCE COMPANY's

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1 assets should be used in a very narrow context, and for the immediate benefit of AMTRUST, is  
2 unconscionable.

3 Dated: May 16, 2011

***VAN DYKE LAW GROUP***

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5 By: S/  
6 GLEN A. VAN DYKE, ESQ.  
7 Attorneys for Objector Contractors  
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