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ENDORSED
FILED
Superior Court of California
County of San Francisco

APR 21 2011

CLERK OF THE COURT
BY: ROSSALY DELAVEGA
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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 **INSURANCE COMMISSIONER DAVE JONES' MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR ORDER APPROVING REHABILITATION PLAN FOR MAJESTIC INSURANCE COMPANY** **Date: June 2, 2011** **Time: 9:30 a.m.** **Dept: 301** **Judge: Hon. Peter J. Busch**

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I.

INTRODUCTION

The Court has granted California Insurance Commissioner Dave Jones' application for an Order conserving Majestic Insurance Company ("Majestic") pursuant to Insurance Code section 1011 based on the Commissioner's determination that the further conduct of Majestic's business outside of statutory conservation would be hazardous to the company's policyholders, creditors, and the public, and has appointed the Commissioner as the statutory conservator of Majestic ("Conservator"). The Conservator has been vested with title to all assets of Majestic, authorized to operate Majestic's business in conservation, and empowered to undertake efforts to rehabilitate or restructure Majestic, a workers' compensation insurer, for the benefit of Majestic's policyholders, creditors, shareholder and the public, and the prosecution of actions against Majestic or its assets has been enjoined. See Order Appointing Conservator and Restraining Orders entered herein ("Conservation Order").

The Commissioner has developed a plan of rehabilitation for Majestic ("Rehabilitation Plan") which would immediately resolve the serious and deepening risks to Majestic policyholders caused by its $46.4 million reserve deficiency by providing Majestic policyholders with full reinsurance written by an A rated insurer, an affiliate of AmTrust North America, Inc. ("AmTrust"). This motion ("Rehabilitation Motion") requests the Conservation Court's approval and ratification of the Rehabilitation Plan and an order expressly authorizing the Commissioner, as Conservator, to implement, close and effect the transactions described in the *Majestic Insurance Company Rehabilitation Agreement* ("Rehabilitation Agreement") between and among the Conservator, AmTrust, and an insurance company affiliate of AmTrust that will reinsure all claims on Majestic policies (the "Reinsurer"). The Commissioner's goals in seeking approval of the Rehabilitation Plan are to provide full policy benefits, stability and continuity for Majestic's policyholders and the many injured worker claimants that rely on Majestic to pay workers' compensation insurance benefits related to industrial injuries, as well as to protect the interests of general creditors and other interested parties in a manner consistent with statutory priorities.

For the reasons set forth in more detail below, the Commissioner, as Conservator, respectfully requests that the Court grant this Motion, approve the Rehabilitation Plan, authorize the Conservator to perform and close the transactions described in the Rehabilitation Agreement, and to take such other actions as are necessary to implement the Rehabilitation Plan forthwith.

II.

FACTUAL BACKGROUND

A. Hazardous Condition of Majestic.

Majestic is an insurance company incorporated under the laws of and domiciled in the State of California, writing workers' compensation insurance policies. Declaration of David E. Wilson in Support of Insurance Commissioner Dave Jones' Motion for Approval of Rehabilitation Plan ("Wilson Decl."), ¶ 4. Majestic is a member of an insurance holding company system. Majestic's immediate parent is Embarcadero Insurance Holdings, Inc., also a California corporation. Embarcadero is a wholly-owned subsidiary of Majestic USA Capital, Inc, a Delaware corporation, which in turn is wholly-owned by the ultimate parent, Majestic Capital, Ltd., a publicly-traded Bermudian corporation. Wilson Decl., ¶ 4.

In 2008, the California Department of Insurance ("CDI") commenced its periodic statutory examination of the affairs and financial condition of Majestic. During the course of the examination, the Commissioner's staff concluded that Majestic was under severe financial strain. Majestic was suffering a decrease in net earned premiums and an increase in its loss ratios. The major contributing factors to Majestic's financial strain were the downgrading of it's A.M. Best rating from an A- (excellent) to a B++(good) in December of 2009, an increase in the costs of reinsuring Majestic's business, and overall difficult market condition resulting from the weakness in business and economic condition in the United States. In addition, Majestic's parent was under investigation by the New York Attorney General in connection with certain self-insured group administration practices, and several lawsuits had been filed in connection with its parent's discontinued New York fee-based management services business. Wilson Decl., ¶ 5. *See also* Declaration of Ronald Dahlquist in Support of Insurance Commissioner Dave Jones' Motion for Approval of Rehabilitation Plan ("Dahlquist Decl."), ¶ 8; Declaration of Al Bottalico in Support of Insurance Commissioner Dave Jones' Motion for Approval of Rehabilitation Plan ("Bottalico Decl."), ¶ 3.

To address the downgrading of it's A.M. Best rating, Majestic entered into a strategic alliance through a quota share agreement effective April 1, 2010 with AmTrust North America, Inc. ("AmTrust", an A.M. Best A rated insurer, under which AmTrust authorized Majestic to issue insurance policies of AmTrust affiliated insurers, subject to Majestic's agreement to reinsure substantially all of the claims under those policies. This arrangement, commonly referred to as a "fronting" arrangement, allowed Majestic to retain a significant portion of the insurance business of customers, such as governmental entities or trusts, that are required by law or their bylaws to obtain insurance only from an A rated carrier. Wilson Decl., ¶ 6. In addition, to attempt to address the need for increased capitalization at Majestic, Majestic Capital formed a Special Committee of its Board of Directors to investigate, among other things, ways to strengthen Majestic's financial position. It retained Macquarie Capital, an investment banking firm, to explore strategic alternatives to increase financial strength, which Majestic Capital publicly stated "could included a sale, merger or other business combination, a sale of shares or other recapitalization, a joint venture or a sale or spinoff of assets." Wilson Decl., ¶ 6, Ex. 1, (Excerpt of Form 10Q for Majestic Capital, August 11, 2010).

On September, 21, 2010, Majestic Capital entered into an agreement with Bayside Capital Partners LLC ("Bayside") under which Bayside would merge with Majestic Capital, Ltd. This merger, if consummated, would have provided Majestic access to increased capitalization. However, Bayside withdrew from the merger agreement on March 21, 2011, citing deterioration in the financial condition of Majestic and related factors. After Bayside terminated the merger agreement, Majestic's A.M. Best rating downgraded again, to B (fair). Wilson Decl., ¶ 7. This rating is below what most insurance brokers (and their respective Errors & Omissions insurers) consider to be "secure," which further damaged Majestic's ability to maintain the viability of its business. *Id.*

Throughout the early months of 2011, there continued to be multiple issues of serious concern to the CDI regarding Majestic's financial condition. The most serious was that Majestic had a loss and loss adjustment expense reserve deficiency and unearned premium reserve deficiency of approximately $46 million as of December 31, 2010, as determined by the CDI and detailed in the declaration of the CDI's Chief Actuary Ronald Dahlquist. Dahlquist Decl., ¶ 7; Bottalico Decl., ¶ 5; Wilson Decl., ¶ 8. Market and policyholder uncertainty about the continued financial viability of Majestic reached an apex at the time of the withdrawal of Bayside from the merger and Majestic management reported that they expected to have great difficulty retaining their insured coming up for renewal on April 1, 2011, as well maintaining their valuable relationships with their broker network. The developments materially increased the likelihood that the Commissioner would be required to place Majestic into conservation in the short term in order to protect policyholders and injured worker claimants. Wilson Decl., ¶ 8; Dahlquist Decl., ¶¶ 7-9.

B. <u>AmTrust's Proposal To Resolve Majestic's Reserve Deficiency and Protect Majestic Policyholders</u>

Around the time of the announcement of Bayside's termination of its proposed merger with Majestic Capital, AmTrust, an affiliated general agent and manager of a group of A-rated workers' compensation and specialty insurers, which had become familiar with Majestic based on the fronting relationship described above, came forward to both Majestic and the Commissioner and advised that AmTrust would be interested in purchasing the assets and assuming the insurance liabilities of Majestic, and providing new employment opportunities for the majority of Majestic's employees. Most significantly, AmTrust was proposing to assume, through a loss portfolio transfer reinsurance agreement, all workers' compensation claim liabilities on Majestic policies without an aggregate limit or cap on the amount of loss reinsured. Given Majestic's financial condition, AmTrust proposed that the transactions be completed through a judicially supervised conservation and rehabilitation proceeding. Wilson Decl., ¶ 9.

As explained by Barry Zyskind, the CEO of AmTrust's parent AmTrust Financial Service, Inc., AmTrust has more than $4.2 billion in assets, $700 million in shareholders' equity, and $137 million in operating earnings (2010). AmTrust is rated A (IX) by A.M. Best. Declaration of Barry Zyskind in Support of Insurance Commissioner Dave Jones' Motion for Approval of

Rehabilitation Plan ("Zyskind Decl."), ¶ 3. In 2010, workers' compensation remained AmTrust's largest line of business, comprising thirty (30%) percent of AmTrust's gross written premium in the total amount of $1.6 billion. AmTrust, one of the twenty (20) largest workers' compensation writers in the United States, focuses on small businesses which often are overlooked by competitors, writing workers' compensation insurance for small businesses through its proprietary technology. Zyskind Decl., ¶ 4. Over the past eight years, AmTrust has acquired and successfully integrated workers' compensation businesses in diverse markets throughout the United States, including Princeton Insurance Agency in Princeton, New Jersey (a book of business in the approximate amount of $100 million (annualized premiums) located, primarily, in the Northeast, acquired in 2003), The Covenant Group in Atlanta, Georgia, (a book of business in the approximate amount of $70 million located, primarily, in the Southeast acquired in 2004), Alea North America in Rocky Hill, Connecticut (which included a book of workers' compensation program business of approximately $150 million, acquired in 2005), Muirfield Underwriters in Chicago, Illinois (a book of business in the approximate amount of $60 million located, primarily, in the Midwest, acquired in 2006), Associated Industries Insurance Services, Inc. in Boca Raton, Florida (a book of business in excess of $100 million and Florida-domiciled workers' compensation carrier in 2007), Cybercomp, (a Swiss Re workers' compensation program in the approximate amount of $100 million which operated in 26 states, which AmTrust acquired in 2009). Zyskind Decl., ¶ 5.

The CDI was familiar with AmTrust because the CDI's financial examination was ongoing during the entire period the AmTrust fronting agreement was in place. In addition, the CDI conducted an independent investigation of the reputation and financial strength of AmTrust and its insurance company affiliates. Based on that experience and review, the CDI determined that AmTrust's proposal presented a viable option for the protection of Majestic's policyholders and injured worker claimants. Wilson Decl., ¶ 10. Of particular importance to the Commissioner was the fact that AmTrust had already demonstrated its ability to address the difficult financial condition of Majestic and the fact that AmTrust had gained critical knowledge about the financial condition of Majestic, and thus would be a well-informed and knowledgeable Rehabilitation Plan participant. Wilson Decl., ¶ 10. The CDI agreed with AmTrust that Majestic's financial condition was such that the proposed transactions should be conducted through a court-supervised conservation and rehabilitation process. Wilson Decl., ¶ 10. The Commissioner immediately began to engage, with Majestic, in negotiations with AmTrust which led to the Rehabilitation Agreement and the three Rehabilitation Transaction Agreements described in Subsection II(D) hereof. These agreements collectively form the core of the Rehabilitation Plan.

C. <u>The Commissioner's Goals For a Rehabilitation Plan</u>

The Commissioner's goals in seeking to establish a Rehabilitation Plan for Majestic are as follows:

a. Full protection of Majestic policyholders and injured worker claimants through reinsurance and administration of their claims by a stable, adequately capitalized company or companies;

b. Protection of the general creditor class of claimants whose claims are subordinate to those of policyholders, by maximizing the value of and conserving Majestic's residual assets;

c. Protection of the rights of the shareholder of Majestic, which rights are subordinate to those of policyholders and all other creditors, but nevertheless are recognized under the Rehabilitation Plan because the Plan (i)ensures that whatever assets remain in Majestic following payment in full of policyholders and creditors will be returned to the shareholder, and (ii) maintains Majestic as a continuing member of its holding company group, and is designed to preserve tens of millions of dollars in tax attributes (net operating loss carryforwards, or "NOLs") for the potential future benefit of Majestic and its affiliates; and

d. Preservation of the safety-net protection provided by the California Insurance Guarantee Association ("CIGA"), in the unlikely event that such protection is ever required in the future for Majestic's policyholders. The Rehabilitation Plan does not restructure or alter policyholder interests in any way that would preclude their receipt of CIGA protection, should CIGA's statutory obligations be triggered at any time in the future.

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D. Terms of Rehabilitation Plan.

The Commissioner has engaged in negotiations with management of Majestic and AmTrust to structure a Rehabilitation Plan for Majestic that satisfies the foregoing goals. The Commissioner, on behalf of Majestic, and AmTrust have entered into the Rehabilitation Agreement, conditioned upon Court approval and ratification. The Rehabilitation Agreement, along with the Rehabilitation Transaction Agreements, which are exhibits to the Rehabilitation Agreement, form the principal contractual components of the Rehabilitation Plan. See Wilson Decl., Ex. 10 (Rehabilitation Agreement and exhibits thereto).

1. Sale of Majestic's Operating Assets & Renewal Rights.

The first of the three integrated agreements is the Renewal Rights and Asset Purchase Agreement between the Conservator and AmTrust ("Renewal Rights Agreement"), Exhibit A to the Rehabilitation Agreement. Under this Agreement, the Conservator will sell and assign Majestic's primary insurance operating assets to AmTrust. Those assets will include among other things all of the systems, data, books and records, broker and vendor relationships, intellectual property, certain office leases, staffing resources, and other business assets that are necessary to (a) administer the Majestic claims in a seamless and efficient manner; (b) administer and service the in-force policies; and (c) provide renewal insurance policies to Majestic's customers as their policies expire. Significantly, AmTrust will provide offers of employment to the majority of Majestic's existing employees at comparable salary and benefit levels to the levels the employees enjoyed while working at Majestic, and with carry-over service credit under AmTrust's benefit plans for the employees' years of service at Majestic. AmTrust's acquisition of the exclusive right, as between Majestic and AmTrust, to offer renewal policies to Majestic's current customers will provide those policyholders with the benefits of continuity and stability in the placement of their workers' compensation insurance. As is explained below, the consideration to be paid by AmTrust for these assets is integrated into all of the components of the Rehabilitation Transaction Agreements, including AmTrust's agreement to reinsure and pay all workers' compensation claims without aggregate limit (as is explained below). In addition, AmTrust will pay a profit share commission to Majestic on a graduated schedule if certain specified loss ratio targets are satisfied on Majestic policies renewed after the closing date of the Rehabilitation Agreement. *See* Wilson Decl., Ex. 2 (and Ex. A thereto).

2. Provisions For the Full Payment of Policyholder Claims.

The second agreement is the Loss Portfolio Transfer and Quota Share Agreement ("Reinsurance Agreement"), which is Exhibit B to the Rehabilitation Agreement. Under the Reinsurance Agreement, Majestic will transfer to the Reinsurer (an AmTrust insurance company affiliate) assets equal to the sum of Majestic's reported statutory liabilities relating to policyholder obligations net of certain reinsurance (prior to the CDI's examination upward adjustment of $46.6 million), plus $26 million. In exchange, the Reinsurer will reinsure all workers' compensation claim liabilities under policies issued by Majestic, without aggregate limit or exclusion. Wilson Decl., Ex. 2 (and Ex. B thereto). In short, through the Reinsurance Agreement the Conservator will have made provision for the full and timely payment of all Majestic workers' compensation policyholder liabilities that are entitled to payment under "Class 2" (the policyholder claim class) of Insurance Code section 1033(a).

The only potential insurance claims which will not be covered without limitation under the Rehabilitation Plan are any claims that could theoretically be made under policies of insurance issued in and before the 1970s by Great Western Insurance Company, a small California property and casualty insurer acquired by Majestic as part of another transaction in the 1970s. These liabilities were transferred to Golden Eagle Insurance Company in the 1980s, but when Golden Eagle failed in 1997, the contingent liability on these long expired legacy policies reverted back to Majestic. Majestic no longer has any material amounts of documentation concerning these policies, nor does Majestic have any reason to believe that any covered claims have or will arise under these policies. However, in the unlikely event that claims do arise under these Great Western policies, the claims will be covered under the Rehabilitation Plan, but with an aggregate limit of $1 million on all such claims. Wilson Decl., ¶ 12.

3. Free Claims Administration Services From AmTrust.

In addition to the agreement to reinsure and pay all workers' compensation claims without limit, the agreement to pay a profit share commission, and other items of consideration, AmTrust has also agreed to provide any and all claims administration fees necessary to the timely adjustment and payment of claims, without charging any service fees to Majestic. This benefit is provided for in the third Rehabilitation Transaction Agreement, the Reinsurance Administrative Services Agreement (Exhibit C to the Rehabilitation Agreement). This agreement provides that AmTrust will provide to Majestic all administrative services currently being performed, or required to be performed, with respect Majestic policies, including premium collection and claims, policy and outward reinsurance administration. Wilson Decl., Ex. 2 (and Ex. C thereto). Because AmTrust is acquiring Majestic's operating assets under the Renewal Rights Agreement, all of this administration work will be performed by the very same people who are currently servicing Majestic's policyholders and claimants. The continuity of claims administration is particularly important to policyholders, given that any transfer of open claims to different claims administrators invariably presents a serious risk of "leakage" and increased claims costs. Any avoidable and unnecessary increases in the costs of claims is ultimately harmful to policyholders, because the policyholder's future workers' compensation insurance premiums will likely increase based on the increased loss payments on prior claims. The Rehabilitation Plan mitigates that risk for policyholders by providing continuity in the management of all open claims.

The net effect of the Rehabilitation Transaction Agreements is that Majestic will transfer all of its insurance business, liabilities and insurance reserve assets to AmTrust, where they will be fully reinsured, protected by sufficient reserves, and be free and clear of the large contingent liabilities that have threatened Majestic's ability to meet its policyholder claim obligations when and as they come due. For the reasons set forth below, the Conservator urges the Court to approve the Rehabilitation Plan on the terms requested by the Conservator.

III.

STANDARD OF REVIEW APPLICABLE TO REHABILITATION PLAN PROCEEDINGS

In exercising his power as Conservator to rehabilitate a conserved insurer, the Conservator is vested with broad discretion. A rehabilitation plan that provides benefits to policyholders and creditors equivalent to or greater than those they would have received in a straight liquidation is an appropriate exercise of discretion by the Conservator and satisfies the standard for approval under California law. *See Carpenter v. Pacific Mutual Life Ins. Co.*, 10 Cal. 2d 307, 335 (1937) (a dissenter to a rehabilitation plan "has no legal cause for complaint simply because the commissioner determined to rehabilitate rather than liquidate" and in a rehabilitation an interested party is entitled to "the equivalent of what he would receive on liquidation.") Thus policyholders receiving full contractual benefits under their policies have no cause to complain about a rehabilitation plan.

A rehabilitation plan must be approved absent an affirmative showing that its terms constitute an abuse of discretion because they either are unsupported by a rational basis or are arbitrary and improperly discriminatory. *See In re Executive Life Ins. Co.*, 32 Cal. App. 4th 344, 358 (1995) (the conservator's actions in rehabilitating a conserved insurer are reviewed under the abuse of discretion standard); *Commercial Nat. Bank v. Superior Court*, 14 Cal. App. 4th 393, 398 (1993) ("the [abuse of discretion] standard and the requirements of the statutory provisions governing insurance insolvency proceedings furnish the tests against which a court must judge any plan of rehabilitation. If they are satisfied, the court should defer to the executive judgment of the commissioner and approve the plan"). *See also Carpenter v. Pacific Mutual Life Ins. Co.*, 10 Cal. 2d 307, 320 (1937).

IV.

ARGUMENT

A. The Commissioner Has The Authority To Formulate The Rehabilitation Plan.

Majestic is being placed into conservation pursuant to the Commissioner's authority under Insurance Code section 1011, which authorizes conservation when the Commissioner determines that the insurer is "in such condition that its further transaction of business will be hazardous to its policyholders, or creditors, or to the public." Cal. Ins. Code § 1011(d). Under section 1011, title and possession of Majestic's assets become vested in the Commissioner, who is authorized to conduct Majestic's business on its behalf to ensure the protection of Majestic's policyholders, creditors, and the public interest. Cal. Ins. Code § 1011. *See Carpenter v. Pac. Mut. Life Ins. Co.*, 10 Cal. 2d 307, 331 (1937).

The Commissioner, as Conservator, has broad authority to carry on and conduct the business affairs of Majestic. Cal. Ins. Code §§ 1037, 1043. Specifically, section 1043 authorizes the Commissioner to enter into rehabilitation agreements subject to court approval. Cal. Ins. Code § 1043. In addition, section 1037(a) authorizes the Commissioner to take all actions "necessary or expedient to collect, conserve or protect [the conserved company's] assets, property, and business, and to carry on and conduct the business affairs of [the company]." The Commissioner may attempt to rehabilitate the insurer as conservator or liquidator, by entering into, with court approval, either reinsuring or rehabilitation agreements. *Carpenter v. Pac. Mut. Life Ins. Co.*, 10 Cal. 2d 307, 331 (1937). Liquidation is authorized if rehabilitation is futile. *Id.; see also In re Executive Life Ins. Co.*, 32 Cal. App. 4th at 356 ("The public has a grave and important interest in preserving the business of the insolvent insurer if that is possible. Hence while the Commissioner as conservator has the power to either rehabilitate the insolvent insurer or to liquidate it, liquidation is a last resort.") (internal citations and quotations omitted). Section 1037 also provides that the Commissioner's authority under the section is not limited to those powers or actions enumerated in the section. Cal. Ins. Code § 1037 ("The enumeration, in this article, of the duties, powers and authority of the commissioner in proceedings under this article shall not be construed as a limitation upon the commissioner, nor shall it exclude in any manner his or her right to perform and to do such other acts not herein specifically enumerated, or otherwise provided for, which the commissioner may deem necessary or expedient for the accomplishment or in aid of the purpose of such proceedings."); *Caminetti v. Guaranty Union Life Ins. Co.*, 52 Cal. App. 2d 330, 333 (1942) (finding that it is Commissioner's duty to take possession of insurer's assets and to conduct its business as conservator if insurer conducts business in manner that risks or results in loss). Finally, section 1077.2 permits the Commissioner to subject a life or health insurer (or a property and casualty insurer that consents) to administrative supervision when "it appears in the commissioner's discretion that . . . (1) The insurer's condition renders the continuance of its business hazardous to the public or to its insureds." Cal. Ins. Code § 1077.2(a)(1).

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B. The Rehabilitation Plan Satisfies The Requirements Of California Law.

The Rehabilitation Plan is well within the discretion of the Conservator. The Rehabilitation Plan offers not only rational and nondiscriminatory treatment to all interested parties, but the full panoply of contractual policy benefits to holders of Majestic policies. The following discussion of the Conservator's goals and how they are accomplished through the Rehabilitation Plan demonstrates that the Rehabilitation Plan should be approved.

1. The Conservator's Goals Are Met By The Rehabilitation Plan

The Rehabilitation Plan satisfies the Conservator's goals for the rehabilitation of Majestic as follows:

a. Full Protection of Majestic Policyholders - The Rehabilitation Plan will result in policyholder liabilities under Majestic policies being reinsured by a stable, adequately capitalized company and will ensure that policyholders receive the benefit of professional claims management and administration from the reinsurer affiliate with AmTrust. Under the Rehabilitation Plan, claims under Majestic insurance policies will be reinsured without an aggregate cap on the amount of policy benefits that AmTrust will be required to pay to fully satisfy claims covered by Majestic's policies. See Wilson Decl., Ex. 1 and Ex. B thereto, Article 2. Such uncapped and unlimited reinsurance is rarely offered to financially troubled insurers by workout partners because of the risk of adverse development beyond current actuarial projections. The risk of adverse development is particularly acute in workers' compensation insurance because of tail and other factors that present challenges in projecting the ultimate cost of claim liabilities. Thus this uncapped and unlimited nature of the reinsurance offered by AmTrust adds significantly to the value of the Rehabilitation Plan. Wilson Decl., ¶ 11.

The only potential insurance claims which will not be covered without limitation under the Rehabilitation Plan are claims under policies of insurance issued in and before the 1970s by Great Western Insurance Company, a small California property and casualty insurer acquired by Majestic as part of another transaction in the 1970s. These liabilities were transferred to Golden Eagle Insurance Company in the 1980s, but when Golden Eagle failed in 1997, the contingent liability on these expired legacy policies reverted back to Majestic. Majestic no longer has full documentation concerning these policies, nor does Majestic have any reason to believe that covered claims can or will arise under these policies. However, in the unlikely event that claims do arise under these Great Western policies, the claims will be covered under the Rehabilitation Plan, but with an aggregate limit of $1 million on all such claims. Wilson Decl., ¶ 12.

Based on the analysis and evaluation described above, including the work of the CDI's examination team led by Al Bottalico and the CDI's Chief Actuary, Ronald Dahlquist, the Commissioner has concluded that the Rehabilitation Plan described in the Commissioner's Motion, the Rehabilitation Agreement and the Rehabilitation Transaction Agreements, is fair and reasonable, and provides significantly greater benefits to policyholders, claimants, and creditors than they would obtain under a statutory liquidation of Majestic. See Wilson Decl., ¶ 13; Dahlquist Decl., ¶¶ 10-11. The Rehabilitation Plan also provides continuity of insurance coverage and claims administration for Majestic policyholders. In addition to the benefits to policyholders and creditors, the Rehabilitation Plan provides for continued employment opportunities for the majority of Majestic's employees on terms comparable to those they enjoyed at Majestic. Wilson Decl., ¶ 13.

Finally under the Rehabilitation Plan the reinsurance and related services will be provided by AmTrust, which has more than $4.2 billion in assets, $700 million in shareholders' equity, and $137 million in operating earnings (2010). AmTrust, which is rated A (IX) by A.M. Best, has the financial strength to assume Majestic's obligations pursuant to the Rehabilitation Plan. AmTrust also has the expertise required to successfully integrate Majestic's business (which is comprised of workers' compensation insurance) and to provide a stable, growing market for Majestic's current agents and policyholders and small businesses throughout the State of California and other states. Zyskind Decl., ¶ 3-5. *See also* Wilson Decl., ¶ 10.

In sum, the Conservator's goal of full reinsurance protection for Majestic policyholders by a stable and adequately capitalized reinsurer is fully satisfied by the Rehabilitation Plan.

b. Protection of General Creditors - General creditors will share in Majestic's assets to the extent that assets are available after all policyholder liabilities have been provided for and such a right to share will be a claim against Majestic. All claimants (other than policyholder claimants, who will not be required to file a proof of claim in this proceeding), will be allowed to file a proof of claim to demonstrate the basis for their claim. The Commissioner's staff will review and determine such claims, subject to this court's oversight under Insurance Code section 1032. If the assets of Majestic are sufficient to pay those obligations which have priority over general creditor obligations, then the general creditors will share rateably in those assets which remain until general creditor claims are paid.

Absent material deterioration in Majestic's assets or an unexpected increase in liabilities, the closing of the transactions contemplated under the Rehabilitation Plan should leave the Majestic conservation estate with more than $15 million in residual assets to apply towards expenses of administration and the satisfaction of general creditor claims and other interests, in the priority order prescribed under Insurance Code section 1033(a). Wilson Decl., ¶ 14.

c. Provision for the Shareholder to Receive Residual Value After Satisfaction of Other Claims and Preservation of Tax Attributes - The Rehabilitation Plan will return to the shareholder any funds remaining at the end of the term of the Rehabilitation Plan after all policyholder, creditor and other claims are fully satisfied. In addition, the Plan is structure to preserve Majestic's NOLs, which may be valuable to Majestic and its affiliates if Majestic's parent companies are successful in any restructuring or revival of their separate businesses.

d. CIGA - The Rehabilitation Plan recognizes CIGA's statutory role and responsibilities, which are unlikely to be invoked.

e. Benefits to Public - The Rehabilitation Plan also provides benefits to the insurance-buying public. AmTrust will provide jobs to the current Majestic employees and will function as a strong underwriter of new and renewal insurance business on the Majestic policies. It will provide Majestic's current insurance producers with access to a more competitive insurance market in which to place insurance risks.[1]

[1] The Conservator continues to negotiate with AmTrust certain technical provisions within the Rehabilitation Transaction Agreements. Those discussions may give rise to minor changes in those agreements. The current versions of the agreements capture the material terms of the transaction contemplated by the Rehabilitation Plan, however, the Conservator reserves the right to supplement the record to provide the Court and interested parties with any significant changes to the proposed transactions. *See* Wilson Decl., ¶ 11.

C. Risks Attendant To The Rehabilitation Plan

The Rehabilitation Plan depends on the continued financial health of AmTrust and Reinsurer. While the experts who have considered the financial condition of these companies are confident of the abilities of AmTrust and its affiliate reinsurer to carry out their commitments, a degree to risk exists in any business venture.

Property and casualty insurance business is inherently based upon risk. While the Rehabilitation Plan seeks to reduce policyholder risk, neither the Rehabilitation Plan nor any plan of rehabilitation can eliminate the risk of adverse insurance loss development. The preceding three decades have been a massive evolution in liabilities on insurance policies issued by property and casualty insurance companies, and extraordinary volatility in the workers' compensation markets in particular. The process of running off a loss portfolio like Majestic's is a long process that will span decades; during that time the ultimate cost of providing care and medical services to injured workers may increase exponentially. There is no way to predict what impact such developments will have on past and current Majestic insurance liabilities. In sum, the Rehabilitation Plan has some inherent risk because of the nature of the business underwritten. The Rehabilitation Plan, however, significantly hedges against those risks as described above.

D. Conservator's Recommendation

The Rehabilitation Plan for Majestic provides full reinsurance for claims on Majestic policies while appropriately funding administrative services for policyholders and claimants. Creditors will also be protected by the Rehabilitation Plan as assets will remain available with Majestic to respond to anticipated general creditor liabilities. The Rehabilitation Plan will return to the shareholder of Majestic any funds remaining after policyholder and creditor claims are satisfied. The Conservator believes that the Rehabilitation Plan is fair and equitable to, and in the best interests of Majestic's policyholders, while providing the potential for value to general creditors and Majestic's shareholder. In addition, the Rehabilitation Plan provides much needed immediate certainty for policyholders. The Conservator therefore believes that it is in the best interests of Majestic's policyholders, creditors and shareholder that the transaction contemplated by the Rehabilitation Plan be approved.

V.

CONCLUSION

For all the foregoing reasons, the Conservator requests that the Court approve the Rehabilitation Plan for Majestic, and enter the order lodged by the Conservator authorizing the Conservator to enter into the Rehabilitation Agreement and Rehabilitation Transaction Agreements and take such other action as are necessary to carry out the Rehabilitation Plan.

Dated: April 21, 2011

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