

1 KAMALA D. HARRIS
Attorney General of the State of California
2 JOYCE E. HEE (State Bar No. 88610)
Supervising Deputy Attorney General
3 KRISTIAN D. WHITTEN (State Bar No. 58626)
Deputy Attorney General
4 455 Golden Gate, Suite 11000
San Francisco, California 94102-7004
5 Telephone: (415) 703-5589
Facsimile: (415) 703-5480
6 Email: kris.whitten@doj.ca.gov

7 THOMAS J. WELSH (State Bar No. 142890)
CYNTHIA J. LARSEN (State Bar No. 123994)
8 ORRICK, HERRINGTON & SUTCLIFFE LLP
400 Capitol Mall, Suite 3000
9 Sacramento, California 95814-4497
Telephone: (916) 447-9200
10 Facsimile: (916) 329-4900
Email: tomwelsh@orrick.com
11 clarsen@orrick.com

12 Attorneys for Applicant
Dave Jones, Insurance Commissioner of the State of
13 California

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

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

20 Applicant,

21 v.

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

23 Respondents.
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ENDORSED
FILED
Superior Court of California
County of San Francisco

APR 20 2011

CLERK OF THE COURT

BY: _____

Deputy Clerk

Case No. CPF-11-511261

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
INSURANCE COMMISSIONER'S EX
PARTE APPLICATION FOR ORDER**

Date: April 21, 2011
Time: 11:00 A.M.
Dept: 301
Judge: Hon. Peter J. Busch

Exempt from filing fees per Govt. Code § 6103

I.

BACKGROUND

Majestic is a monoline workers' compensation company which has been found, after an examination by the California Department of Insurance ("CDI"), to be in such a condition that the further transaction of its business outside of conservation would be hazardous to its policyholders, creditors and the public. Cal. Ins. Code § 1011(d). Accordingly, the Commissioner has brought conservation proceedings against Majestic pursuant to section 1011, *inter alia*, of the California Insurance Code. Under section 1011, title and possession of Majestic's assets are vested in the Commissioner, as Conservator of Majestic. The Commissioner is authorized to conduct Majestic's business, or so much of it as he sees fit, to ensure the protection of Majestic's policyholders, creditors and the public interest. *Id. See Carpenter v. Pac. Mut. Life Ins. Co.*, 10 Cal. 2d 307, 331 (1937). See also Cal. Ins. Code §§ 1037(a)(h), 1043.

The Commissioner has broad authority to enter into rehabilitation agreements subject to Court approval. Cal. Ins. Code § 1043. The Conservator, with Majestic, has developed a plan for its rehabilitation ("Rehabilitation Plan") which is to be the subject of the hearing this Application requests. The primary components of the Rehabilitation Plan are a Rehabilitation Agreement and accompanying series of agreements between the Conservator, on behalf of Majestic, and AmTrust North America, Inc. ("AmTrust"), by which AmTrust or an Affiliate will purchase certain of Majestic's assets, obtain renewal rights to Majestic's policies, and administer, reinsure and pay all claims liabilities arising under Majestic's policies.¹ Because Majestic's assets are currently at risk of diminution in value with each passing day, the closing of the transaction contemplated by the Rehabilitation Plan through Majestic's conservation proceeding at the earliest possible date consistent with proper notice to interested parties is in the best interest of all parties, including Majestic's policyholders, shareholder, and creditors.

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¹ The set of agreements between Majestic and AmTrust North America, Inc. (collectively, the "Rehabilitation Transaction Agreements") that make up the core of the Rehabilitation Plan consists of (i) a Renewal rights and Asset Purchase Agreement, (ii) a Loss Portfolio transfer and Quota Share Reinsurance Agreement, and (iii) a Reinsurance Administrative Services Agreement.

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II.

ARGUMENT

A. The Court Should Enter an Order Setting The Hearing on Conservator's Motion for Order Approving the Rehabilitation Plan for the Date Requested by Conservator

The Conservator respectfully requests that the Court enter an order on this Application (1) setting a hearing date on the Conservator's Motion for Order Approving the Rehabilitation Plan for Majestic Insurance Company ("Rehabilitation Plan Motion") for 9:30 a.m. on June 2, 2011, or as soon thereafter as the Court's calendar permits, (2) setting the deadline for interested parties to submit their Opposition Papers for May 16, 2011, (3) requiring Conservator to file and serve upon the person or entity filing such Opposition Papers any Reply thereto by May 26, 2011, and (4) prescribing additional orders and procedures relating to the conduct of the hearing, as described in the form of Order lodged with the Application. The Conservator believes that a hearing date of June 2, 2011, will afford all policyholders, creditors, and other persons interested in the rehabilitation of Majestic sufficient time to review and consider the Conservator's proposed Rehabilitation Plan and to formulate any responses or opposition to the Plan in preparation for the Hearing. Further, it is crucial that a hearing date be set at or as near as possible the date requested by the Conservator in order to allow the Conservator to maintain the economic viability of the proposed Rehabilitation Plan by preserving the value of Majestic's assets from substantial deterioration and devaluation caused by market uncertainty arising from Majestic's troubled financial condition and its resulting conservation.

B. The Court Should Approve the Forms of Notices by Mail and Publication

Contemporaneously with the filing of the Ex Parte Application, Conservator has submitted a proposed form of notice by mail to policyholders, creditors, the shareholder and other parties interested or potentially interested in Majestic, and a form of publication notice (collectively, the "Notices"), setting forth notice of the hearing on the Rehabilitation Plan Motion, summary information on the Rehabilitation Plan, and instructions regarding the ability to obtain immediate access to full information regarding the Rehabilitation Plan and the Rehabilitation Plan Motion. The forms for notice by mail are attached as Exhibits A (notice by mail) and B

1 (publication notice) to the proposed Order lodged with this Application. The form of notice by
2 mail will be mailed immediately after the filing of the Rehabilitation Plan Motion to a long list of
3 policyholders and potential creditors of Majestic, together with a variety of other parties that the
4 Conservator has identified as having a potential interest in this proceeding and the Rehabilitation
5 Plan Motion. The Conservator is not, however, sending notice to the individual injured worker
6 claimants covered under Majestic's policies, because the claimants are not in any manner
7 impaired by the Rehabilitation Plan (they are, in fact, greatly benefitted under the Plan) and to do
8 so would, in the Conservator's view, unnecessarily disrupt the lives of the injured workers and
9 would materially increase avoidable expenses of the conservation process.

10 Further, the Conservator plans to publish the form of publication notice in various
11 newspapers throughout the state, and in several other states in which Majestic has a material
12 amount of business and policyholders. While publication of notice of the proposed Rehabilitation
13 Plan is not required in this case because Majestic is not currently being liquidated (see Ins. Code
14 §§ 1021-22), the Conservator believes publication will increase the scope and speed of notice to
15 interested parties, at a relatively modest cost.

16 The Conservator believes that distribution and publication of the Notices as specified
17 herein will provide policyholders, Majestic's shareholder, creditors, and other interested parties
18 with fair, reasonable, and adequate notice of these rehabilitation proceedings, as well as adequate
19 information concerning the terms of the Conservator's proposed Rehabilitation Plan and how to
20 immediately obtain even more detailed information if so desired. The Conservator's notice plan
21 will allow for an expeditious and efficient resolution of Majestic's conservation, which is critical
22 to avoiding erosion of Majestic's assets and, potentially, the termination of the Rehabilitation
23 Agreement on which the Rehabilitation Plan rests.

24 Accordingly, the Conservator respectfully requests that the Court approve of the form of
25 the Notices. If the Notices are not acceptable to the Court in their current form, the Conservator
26 is prepared to work with the Court to address any issues, and provide further information as the
27 Court deems appropriate.

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III.

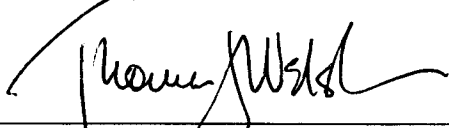
CONCLUSION

For all of the foregoing reasons, the Conservator requests that the Court grant the Application, and enter an Order setting a hearing on the Conservator's Motion for Order Approving the Plan of Rehabilitation on June 2, 2011, establishing the schedule for filings outlines above, and approving the forms of Notices.

Dated: April 20, 2011

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

THOMAS J. WELSH
CYNTHIA J. LARSEN
Orrick, Herrington & Sutcliffe LLP

By: 

THOMAS J. WELSH
Attorneys for Applicant
Dave Jones, Insurance Commissioner of
the State of California

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