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NEW YORK STATE WORKERS' COMPENSATION BOARD

SUPERIOR COURT OF THE STATE OF CALIFORNIA

CITY AND COUNTY OF SAN FRANCISCO

INSURANCE COMMISSIONER OF THE  
STATE OF CALIFORNIA,

Applicant,

vs.

MAJESTIC INSURANCE COMPANY,

Respondent.

Case No. CPF-11-511261

**DECLARATION OF MICHAEL PAPA IN  
SUPPORT OF NEW YORK STATE  
WORKERS' COMPENSATION BOARD'S  
OBJECTIONS TO THE PROPOSED  
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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**DECLARATION OF MICHAEL PAPA**

I, Michael Papa, hereby declare and state as follows:

1. I am the Associate Attorney in the Litigation Unit Office of General Counsel for the respondent State of New York Workers' Compensation Board ("NYWCB"). For approximately the last nine years my primary duties have been advising the NYWCB's Office of Self Insurance. During this time I have become familiar with actuarial reports and methodologies, audited financial statements and Generally Accepted Accounting Principles, and the operations of group self insurance trusts (GSITs) in general, including but not limited to excess policies. I drafted the NYWCB regulation defining insolvency in the context of GSITs and was the primary NYWCB attorney involved in drafting the "NY Litigation", as defined below, as well formulating and negotiating the proposed settlement of same, which will also be detailed below.

2. The NYWCB is a governmental agency created pursuant to the New York State Workers' Compensation Law ("NYWCL"), with a principal office located at 20 Park Street, Albany, Albany County, New York.

3. I have reviewed the proposed Rehabilitation Plan ("Plan") of California Insurance Commissioner Dave Jones ("Conservator") for Majestic Insurance Company ("Majestic"), along with the Conservator's papers and submissions in support thereof. I am fully familiar with the facts and circumstances set forth herein, and could and would testify competently to them if called as a witness to do so.

4. I am also fully familiar with the lawsuit presently pending in the New York State Supreme Court, County of Albany under the caption *The New York State Workers'*

1 *Compensation Board v. Compensation Risk Managers, LLC, et al*, Albany County Index Number  
2 10288-2009 (“NY Litigation”).

3           5. I submit this declaration in support of the NYWCB’s objections to the  
4 Plan. I have set forth below the NYWCB’s interest in the Majestic conservation, both in terms of  
5 its status as successor in interest to a number of GSITs, through which employers may provide  
6 workers’ compensation coverage to their employees, and its capacity as the governmental entity  
7 charged with administering the NYWCL. Majestic was the excess insurer for the GSITs  
8 discussed below. The New York Litigation figures prominently in the Conservator’s justification  
9 for initiating this proceeding and is, therefore, relevant.  
10

11           6. Below, I initially address the NY Litigation (in paragraphs 7 through 66). I  
12 then detail the NYWCB objections to the Plan (in paragraphs 67 through 123). The NYWCB  
13 believes that the Conservator’s motion to approve the Plan should be denied, and that this matter  
14 should not be decided on a motion but that the Court should permit limited discovery and hold an  
15 evidentiary hearing to address many of the issues raised below.  
16

17  
18 **THE NYWCB’S PENDING**  
**NEW YORK LITIGATION AGAINST MAJESTIC**

19 **Background**  
20

21           7. Pursuant to 12 NYCRR § 317.20, the NYWCB is the successor in interest  
22 to the following GSITs (collectively, the “Trusts”): The Healthcare Industry Trust of New York  
23 (“HITNY”), The Wholesale and Retail Workers’ Compensation Trust of New York (formerly  
24 known as the Grocery Industry Trust of New York) (“WRWCT”), Transportation Industry  
25 Workers’ Compensation Trust (formerly known as The Transportation Trust of New York)  
26 (“TRIWCT”), Trade Industry Workers’ Compensation Trust for Manufacturers (formerly known  
27 as the Manufacturing Industry Workers Compensation Trust of New York) (“TIWCT”), The Real  
28 300256092.1

1 Estate Management Trust of New York ("REMTNY"), The Public Entity Trust of New York  
2 ("PETNY"), and Elite Contractors Trust of New York ("ECTNY").

3 8. The NYWCB is the governmental entity charged with administration of the  
4 NYWCL and attendant regulations, and has all of the powers and duties set forth in  
5 NYWCL § 142.  
6

7 9. The NYWCB's mission is to equitably and fairly administer the provisions  
8 of the NYWCL, including workers' compensation benefits, disability benefits, volunteer  
9 firefighters' benefits, volunteer ambulance workers' benefits, and volunteer civil defense  
10 workers' benefits on behalf of New York's injured workers and their employers.

11 10. Pursuant to NYWCL §§ 10 and 50, all employers in New York State must  
12 secure the payment of workers' compensation to their employees.  
13

14 11. The NYWCL states that employers may secure the payment of workers'  
15 compensation to their employees in one of the following three ways: (1) by insuring and keeping  
16 insured the payment of such compensation from the State Insurance Fund (NYWCL § 50(1)); (2)  
17 by insuring and keeping insured the payment of such compensation with any insurance carrier  
18 authorized to transact such business in New York State (NYWCL § 50(2)); or (3) by becoming a  
19 self-insurer (NYWCL § 50(3) and NYWCL § 50(3-a)).  
20

21 12. In the event that an employer pursuing coverage under NYWCL § 50(3) is  
22 unable to demonstrate the financial wherewithal to self-insure individually, it may join with other  
23 employers in related industries and form a GSIT. A GSIT is defined under NYWCL § 50(3-a) as  
24 a group of employers who jointly self-insure for workers' compensation claims.

25 **Group Self-Insurance**

26 13. Pursuant to NYWCL § 50(3-a)(2), employers "may adopt a plan for self-  
27 insurance, as a group, for the payment of compensation under this chapter to their employees." A  
28

1 condition of any such plan is that the group of employers provide proof to the NYWCB of the  
2 GSIT's financial ability to pay all compensation for which the employers may be liable under the  
3 NYWCL. All private employers, whether individuals or as members of a GSIT, who wish to self-  
4 insure for workers' compensation benefits, must apply to, and be duly authorized by, the  
5 NYWCB's Office of Self-Insurance.  
6

7 14. The NYWCB regulations require GSITs to provide evidence of adequate  
8 capitalization and maintain assets in excess of liabilities.

9 15. The NYWCB regulations require GSITs to comply with the remedial  
10 provisions applicable to under-funded GSITs.

11 16. A GSIT obtains assets by the payment of annual contributions to the GSIT  
12 from the employer members who participate in the GSIT, who thereby obtain workers'  
13 compensation coverage for their employees.  
14

15 17. GSITs are required to provide excess insurance to assist in ensuring the  
16 GSIT's solvency by protecting against "catastrophic" claims. The premiums charged for these  
17 excess policies are paid by the GSIT with the contributions from the members of the GSIT.

18 18. The NYWCL and the NYWCB's regulations require that all self-insurers,  
19 including GSITs, deposit securities with the NYWCB pursuant to NYWCL § 50(3-a).  
20

21 19. The NYWCB receives and reviews annual independently audited financial  
22 statements and actuarial reports submitted by every GSIT. These documents detail the GSITs  
23 liabilities and assets.

24 20. If the GSIT's annual audited financial statements and actuarial reports  
25 indicate that the GSIT has greater liabilities than assets, known as "underfunding," the GSIT is  
26 subject to the remediation procedures set forth in 12 NYCRR § 317.9, including dissolution of the  
27 GSIT.  
28

1                   21.     Depending upon the severity of the underfunding, the NYWCB may take  
2 one or more of the actions designated in 12 NYCRR § 317.9(b), which are designed to restore the  
3 GSIT to a funded status in a timely manner.

4   **Dissolution of GSITs**

5                   22.     A GSIT whose financial analysis demonstrates continued underfunding  
6 status that is so severe that it cannot be restored to a financially stable position in a timely manner  
7 will be terminated by order of the NYWCB. When this occurs, the GSIT no longer provides  
8 coverage for its members. The GSIT's members still are required to meet workers' compensation  
9 obligations, which accrued prior to termination, and are payable directly to the injured employees.  
10

11                   23.     In the event the NYWCB determines that a GSIT cannot properly  
12 administer its liabilities due to its inability to pay outstanding lawful obligations, the NYWCB  
13 may deem the GSIT insolvent and assume administration and final distribution of the GSIT's  
14 assets and liabilities, pursuant to 12 NYCRR § 317.20.

15                   24.     In such a situation, the records, claims files and any remaining assets of the  
16 GSIT are transferred to the Board's designated third party administrator (TPA) for purposes of  
17 administering the GSIT's accrued claims.  
18

19                   25.     The NYWCB's overriding concern is to ensure that the statutorily  
20 mandated benefits to injured workers are not interrupted, even if the GSIT becomes insolvent.  
21 After assuming administration and final distribution of an insolvent GSIT's assets and liabilities,  
22 the NYWCB makes a demand on the guarantor of the security deposit, and uses the security  
23 deposit and the GSIT's remaining assets to pay the GSIT's remaining workers' compensation  
24 obligations.  
25

26                   26.     Upon the exhaustion of the GSIT's remaining assets and security deposit,  
27 the NYWCB must meet all of the insolvent GSIT's obligations out of its own administrative fund.  
28

27. In so doing, the NYWCB incurs additional and significant expenses that are allocated to the Office of Self-Insurance.

28. While the Board initially meets the obligations of an insolvent GSIT from its administrative fund, the Board conducts a forensic accounting of the GSIT to verify its liability and allocate the liabilities upon the employer members that participated in the GSIT. Thereafter, the Board issues bills to the employer members of the GSIT seeking repayment of each members pro rata share of the GSIT's accumulated deficit.

## The Trusts

29. In or about September 1999, HITNY was authorized by the NYWCB to operate as a GSIT in the State of New York. HITNY was formed on or about September 12, 1999.

30. In or about September 1999, WRWCT, formerly known as the “Grocery Industry Trust of New York,” was authorized by the NYWCB to operate as a GSIT in the State of New York. The Grocery Industry Trust of New York was formed on or about November 27, 1999. On or about March 16, 2000, the name of the trust was changed to “The Food and Beverage Industry Trust of New York,” and then later to “The Wholesale and Retail Workers’ Compensation Trust of New York” on December 19, 2000.

31. In or about December 2000, TRIWCT, formerly known as “The Transportation Trust of New York,” was authorized by the NYWCB to operate as a GSIT in the State of New York. The Transportation Trust of New York was formed on or about December 27, 2000. Effective as of December 27, 2000, the name of the trust was changed to “Transportation Industry Workers’ Compensation Trust.”

32. In or about December 2001, TIWCT, formerly known as “The Manufacturing Industry Workers’ Compensation Trust of New York” was authorized by the

1 NYWCB to operate as a GSIT in the State of New York. TIWCT was formed on or about  
2 December 27, 2001. Effective as of December 27, 2001, the name of the trust was changed to  
3 "Trade Industry Workers' Compensation Trust for Manufacturers."

4 33. In or about January 2001, REMTNY was authorized by the NYWCB to  
5 operate as a GSIT in the State of New York. REMTNY was formed on or about January 1, 2001.  
6

7 34. In or about January 2001, PETNY was authorized by the NYWCB to  
8 operate as a GSIT in the State of New York. PETNY was formed on or about January 1, 2001.

9 35. In or about August 1999, ECTNY was authorized by the NYWCB to  
10 operate as a GSIT in the State of New York. ECTNY was formed on or about August 27, 1999.

11 36. From 1999 to September 2008, Consolidated Risk Managers, LLC  
12 ("CRM") acted as a group administrator and third-party administrator representing the Trusts  
13 before the NYWCB.  
14

15 37. Collectively, approximately 5350 small to mid sized New York employers  
16 participated in the Trusts.

17 38. As set forth more fully below, Majestic is an affiliated company of CRM.

18 39. CRM, for extended periods of time, exercised dominion and/or control  
19 over aspects of the Trusts' operations, including determining which insurance company to select  
20 for procurement of excess insurance coverage. CRM selected Majestic<sup>1</sup> for each of the Trusts to  
21 provide excess insurance coverage.  
22

23 40. The premium charged by Majestic for the Trust's excess policies were paid  
24 by the Trusts from member contributions. These premiums thereby became the assets of Majestic.

25 41. In comparison to other excess policies issue by other excess carriers to  
26

27 <sup>1</sup> Prior to obtaining ownership of Majestic, CRM placed all GSIT excess coverage with New York Marine and  
28 General Insurance Company (NYMAGIC) and reinsured this business through CRM's subsidiary Twin Bridges Ltd.  
Immediately after CRM acquired Majestic, all of the GSIT excess policies were assigned and novated to Majestic  
with Majestic directly writing excess coverage for the GSITs beginning in 2007.



1 similarly situated GSITs, the premiums paid by the Trusts to Majestic were inflated and/or the  
2 coverage provided under the policies were inadequate for the premium charged.

3 42. The actions, as well as the inactions, of CRM, Majestic, and others caused  
4 the Trusts to become underfunded and/or insolvent.

5 43. As of September 30, 2009, HITNY had a member deficit of approximately  
6 \$220,000,000.

7 44. As of December 31, 2009, WRWCT had a member deficit of  
8 approximately \$66,000,000.

9 45. As of December 31, 2009, TRIWCT had a member deficit of  
10 approximately \$140,000,000.

11 46. As of December 31, 2009, TIWCT had a member deficit of approximately  
12 \$25,800,000.

13 47. As of December 31, 2009, REMTNY had a member deficit of  
14 approximately \$6,200,000.

15 48. As of December 31, 2009, PETNY had a member deficit of approximately  
16 \$7,500,000.

17 49. As of December 31, 2009, ECTNY had a member deficit of approximately  
18 \$82,000,000.

19 50. As a result of the above deficits, the Trusts were unable to properly  
20 administer their liabilities. Accordingly, the NYWCB assumed administration and final  
21 distribution of the Trusts' assets and liabilities, and directed CRM to transfer all of its records  
22 pertaining to the administration of the Trusts to the NYWCB and its TPA.  
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1           51.     The NYWCB assumed the administration of HITNY on October 22, 2007;  
2 of PETNY on October 26, 2007; of TIWCT on April 1, 2008; of REMTNY on June 26, 2008; of  
3 WRWCT on July 3, 2008; of TRIWCT on July 3, 2008; and of ECTNY on January 27, 2010.

4           52.     Shortly thereafter the remaining assets and available security of the Trusts  
5 were exhausted and the Trusts are insolvent as defined in 12 NYCRR § 317.20.  
6

7           53.     Since the period immediately prior to the NYWCB's assumption of the  
8 administration and final distribution of the Trusts' assets and liabilities, the NYWCB has incurred  
9 significant expenses in connection with the administration of the Trusts' liabilities.

10          54.     The NYWCB will continue to incur such expenditures for the foreseeable  
11 future, until all of the obligations of the Trusts have been extinguished.  
12

13          55.     In addition to the NYWCB's administrative expenses associated with the  
14 Trusts, the NYWCB meets any and all obligations of these insolvent GSITs with monies from the  
15 NYWCB's administrative fund while it simultaneously seeks the repayment of each employer  
16 members' pro rata shares of the deficits.

17          56.     As a result of the foregoing, and in accordance with 12 NYCRR § 317.20,  
18 the NYWCB is the successor in interest to the Trusts.

19          57.     As successor in interest to the Trusts, the NYWCB files excess claims on  
20 behalf of the Trusts. To date, the NYWCB has received over 65 denials by Majestic. The net  
21 value of the denials, is approximately \$10 Million.  
22

23          58.     By virtue of the NYWCB's status as successor in interest to the Trusts, the  
24 NYWCB is a policy holder in these proceedings, as well as a regulatory governmental agency  
25 charged with the administration of the NYWCL.  
26  
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**The NYWCB's Allegations Against  
Majestic and its Parent Company CRM**

59. On December 9, 2009, the NYWCB filed suit in the State of New York Supreme Court, Albany County against CRM, Majestic, and numerous other affiliated or related parties.

60. CRM was and is a New York State limited liability company with a principal place of business located at 2515 South Road, Poughkeepsie, Dutchess County, New York. CRM is a wholly-owned subsidiary of CRM USA Holdings, Inc. ("CRM USA"), whose parent is CRM Holdings. CRM USA was and is a Delaware Corporation with a principal place of business located at 2515 South Road, Poughkeepsie, Dutchess County, New York.

61. Majestic was and is a wholly-owned subsidiary of CRM Holdings. Majestic was acquired by CRM Holdings on November 14, 2006 and Majestic was licensed by the New York State Insurance Department on December 18, 2006.

62. CRM placed excess insurance with Majestic for each of the Trusts<sup>2</sup>. CRM and Majestic failed to timely disclose this relationship to either the WCB or the Trusts prior to placing excess insurance with Majestic, and failed to provide the Trusts with alternative quotes for excess coverage that did not benefit CRM financially.

63. CRM's use of an affiliate for the provision of excess insurance violated WCL regulations and provisions of its service agreements with the Trusts by, among other things, failing to ensure that the premiums paid by the Trusts were competitive and/or reasonable.

64. CRM's administration of the Trusts, with the participation and collusion of its affiliates, including Majestic, resulted in each of the Trusts becoming severely underfunded and resulted in the NYWCB dissolving the Trusts and exhausting their assets. The NYWCB has

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<sup>2</sup> The NY Litigation includes claims on behalf of another GSIT, NYSACT, which is not part of this proceeding as it is the only CRM administered GSIT which did not procure excess coverage through Majestic. Interestingly enough, NYSACT's deficit is only approximately \$3.5 million, or about half of the next closest CRM GSIT.

1 incurred \$472 million in actual damages in its capacity as the governmental entity charged with  
2 the administration of the NYWCL and attendant regulations, and in its capacity as successor in  
3 interest to the Trusts.

4 65. Furthermore, the Board is seeking the repayment of these funds from the  
5 approximately 5350 small to mid sized employers that participated in the GSITs  
6

7 66. In the NY Litigation, the NYWCB asserted claims against the defendants  
8 for, among other things, breach of fiduciary duty, breach of contract, breach of duty of good faith  
9 and fair dealing, and unjust enrichment, and fraud with respect to placing excess insurance for  
10 seven New York GSITs with Majestic and that this placement caused such coverage to either  
11 have cost too much or to have provided insufficient coverage.  
12

13 **THE NYWCB'S OBJECTIONS TO**  
**THE CONSERVATOR'S REHABILITATION PLAN**

14 67. The Conservator's rehabilitation plan for Majestic essentially has AmTrust  
15 Financial Services, Inc. ("AmTrust") assuming all of the liabilities of the Majestic policies,  
16 assuming Majestic's California lease obligations, and maintaining Majestic's California  
17 employees in exchange for the transfer of Majestic's assets equal to the sum of Majestic's  
18 reported liabilities, plus \$26 million.  
19

20 68. Specifically carved out of the liabilities assumed by AmTrust are the  
21 liabilities of Majestic related to the NY Litigation. *See* §7.1(c) of the Plan. The Plan also calls  
22 for the transfer of title to all retaliatory security deposits from Majestic to AmTrust or one of its  
23 subsidiaries. *See* §2.2.2 of the Plan. New York Department of Insurance ("NYDOI") currently  
24 holds such a security deposit in the amount of approximately \$35 million.  
25

26 69. Prior to the proposal of AmTrust, another insurance carrier – Bayside  
27 Capital Partners, LLC ("Bayside") – considered acquiring Majestic.

28 70. Upon information and belief, Bayside's acquisition did not involve

1 retaining any California leases, did not involve retaining any of Majestic's California employees,  
2 and did not involve combining the assets of Majestic with one of Bayside's existing insurance  
3 carriers.

4  
5 71. Upon information and belief, all of these factors made Bayside's proposal  
6 unattractive to the CADOI.

7 72. However, Majestic's management believed that the purchase was  
8 acceptable and Bayside was willing to accept the terms and conditions of the settlement of the  
9 NY Litigation, insofar as those settlement terms affected Majestic.

10 **The Conservator breached his duty as trustee**  
11 **in his consideration of the proposed settlement of the NY Litigation.**

12 73. The Plan relies heavily upon the declaration of Ronald Dahlquist  
13 ("Dahlquist Declaration"). Dahlquist's declaration states, "Any proposed settlement of the [NY  
14 Litigation] could negatively affect the financial condition of Majestic." See Dahlquist  
15 Declaration at paragraph 8(c). It is noted that Dahlquist makes no similar statement when  
16 discussing the three similar, later filed California based actions.

17  
18 74. Furthermore, Dahlquist's statement is untrue. The CADOI was already  
19 presented with a proposed settlement in the NY Litigation. That settlement, which will be  
20 discussed more fully below, would not have negatively affected the financial condition of  
21 Majestic. In fact, it would have resolved the NY Litigation, allowed Majestic's AM Best rating to  
22 increase, allowed Majestic to begin rebuilding its book of business, and would not have  
23 prejudiced creditors.

24  
25 75. Beginning in or about July 2010, approximately eight months prior to the  
26 Conservator commencing this proceeding, the Conservator, through the CADOI, engaged in  
27 discussions with the NYWCB and Majestic's management regarding a proposed settlement of the  
28 NY Litigation.

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1           76.     At no time during those discussions did CADOI or the Conservator state  
2 that "Any proposed settlement of the New York Litigation" would be detrimental to the solvency  
3 of Majestic. In fact, the CADOI agreed that settling the NY Litigation with respect to Majestic  
4 was in Majestic's best interests.

5           77.     The Conservator has never stated to the NYWCB, or to your declarant's  
6 knowledge, any representative of Majestic that "[a]ny proposed settlement of the New York  
7 litigation" would be detrimental to the solvency of Majestic. In fact, the CADOI discussed the  
8 settlement with the NYWCB and Majestic over a period of several months. If Dahlquist's  
9 statement was true, the CADOI would not have engaged in these discussions. In fact, as stated  
10 above, settling the NY Litigation would be beneficial to Majestic. It may even obviate the need  
11 for this proceeding.  
12

13           78.     During these discussions, the Conservator wanted to resolve the NY  
14 Litigation stating that, "the New York Litigation is a black cloud hanging over Majestic", thereby  
15 intimating that settlement of the claims would in fact restore Majestic's financial health. In  
16 furtherance thereof, in or about October 2010, CADOI requested, and the NYWCB provided,  
17 detailed information regarding the current loss reserves of Majestic for the NY GSITs as well as  
18 detailed explanations and supporting documents concerning the nature of certain provisions of the  
19 settlement as they affected Majestic.  
20

21           79.     In early November the NYWCB inquired as to if CADOI needed additional  
22 information relative to the proposed settlement and was told that it did not and that their opinion  
23 would be available in approximately two months.  
24

25           80.     In January 2011, the NYWCB inquired if CADOI had completed its review  
26 and were told it had not. Upon inquiry, the NYWCB was told that the review would be complete  
27 on or about March 1, 2011.  
28

1                   81.     Upon information and belief, on or about February 1, 2011, Majestic's  
2 management traveled to California to meet with CADOI and the Conservator on the issue of the  
3 settlement of the NY Litigation.

4                   82.     Upon information and belief, Majestic's management discussed the  
5 CADOI's review of the settlement and its conclusion that the effect of the proposed aggregate  
6 changes that form the basis of the instant dispute between NYWCB and AmTrust and valued the  
7 same at a mere \$12 million.

8                   83.     During this eight month period, in which the settlement of the New York  
9 Litigation was delayed due to the above "review" by CADOI and Conservator, Majestic  
10 continued to operate at a loss due to the decline in premium base because of the New York  
11 Litigation.

12                   84.     Upon information and belief, on or about March 1, 2011, in light of the  
13 continued inactivity of the CADOI in approving the settlement, and the financial deterioration  
14 that had taken place during CADOI's nearly nine months review, Bayside withdrew its offer to  
15 purchase Majestic.

16                   85.     In light of Bayside withdrawing its offer, Majestic's management and  
17 AmTrust discussed potential purchase agreements, all of which included AmTrust agreeing to the  
18 portion of the settlement of the NY Litigation affecting Majestic. Upon information and belief,  
19 the Conservator never solicited competitive bids with other potential buyers in order to maximize  
20 the return to policy holders and creditors, pursuant to his statutory and constitutional obligations.

21                   86.     Upon information and belief, in or about March 2011, AmTrust sought  
22 permission from Majestic's management and obtained permission to speak directly with CADOI.

23                   87.     On or about, March 16, 2011, for the first time, Majestic's management  
24 informed the NYWCB that AmTrust had arrived at a separate agreement with CADOI concerning  
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1 the purchase of Majestic and that the NY Litigation would not be part of the transaction.

2 88. It appears that the CADOI and Conservator's review served only to: (a)  
3 delay, and eventually deny, the proposed settlement with Bayside; (b) allow CADOI and the  
4 Conservator to develop flawed examination findings supporting the instant proceeding; and (c)  
5 enter into the proposed Plan with AmTrust based on AmTrust's commitment to keep jobs and  
6 resources in California, all of which is to the detriment of policy holders and creditors.  
7

8 89. Notwithstanding the above, and since receiving the Plan and papers, the  
9 NYWCB has continued to attempt to resolve the NY Litigation with both AmTrust and the  
10 CADOI and has suggested numerous alternative settlement compensation packages.

11 90. However, AmTrust and CADOI have conspired to reject any meaningful  
12 settlement compensation. Instead the Conservator insists on pursuing a path that will prejudice  
13 the NYWCB and all of Majestic's policy holders and creditors.  
14

15 91. Furthermore, in the context of the above discussions, the Conservator  
16 stated that if the NYWCB does object to the Plan, and Majestic is forced into liquidation, that  
17 CADOI will refuse to honor claims from New York Majestic policy holders. While the  
18 Conservator later amended his statement, clearly the Conservator places the blame for Majestic's  
19 condition at the feet of the NYWCB and is discriminating against New York policy holders as a  
20 result.  
21

22 92. All of the above is to the detriment of the New York Majestic policy  
23 holders and to the unjust enrichment of AmTrust and CADOI, inasmuch as CADOI is now  
24 running Majestic and, upon information and belief, enjoying Majestic lease space free of charge.

25 93. The only readily apparent goal of the Conservator and the CADOI appears  
26 to have been to allow AmTrust to obtain all of the assets and simultaneously escape NYWCB's  
27 action in exchange for keeping California employees employed and maintaining California-based  
28



1 obligations, conditions to which Bayside would not commit. It is respectfully submitted that this  
2 is an improper basis for placing Majestic into conservation, and an improper basis for approving  
3 the Plan.

4  
5 **THE NY LITIGATION IS INEXTRICABLY**  
**INTERTWINED WITH THE CONSERVATION**

6 94. As noted above, the Plan is premised in large measure upon the accuracy of  
7 the Dahlquist declaration.

8 95. The Dahlquist declaration, the Wilson declaration, and the memorandum of  
9 law reference Majestic's financial performance subsequent to December 2009. In other words,  
10 the Plan is premised upon the financial performance of Majestic after the NYWCB commenced  
11 the NY Litigation on December 9, 2009.

12 96. The Dahlquist declaration also cites the decrease in premiums, and  
13 resulting losses, for the period December 2009 through December 2010. That decline in  
14 Majestic's revenues was caused in large measure by the decline of its AM Best rating in 2009.  
15 AM Best's statement, effective December 16, 2009, which downgraded Majestic from A - to B++  
16 indicates that the basis for the downgrade was the NY Litigation. This downgrade, which  
17 occurred immediately prior to Majestic's renewals, caused Majestic's premium renewals to  
18 decline. Thus, items (a) through (c) of paragraph 8 the Dahlquist declaration are directly  
19 attributable to the NY Litigation.

20 97. The pattern of conduct alleged in the three California actions referenced in  
21 paragraph 8(d) of the Dahlquist declaration is nearly identical to that alleged in NYWCB's  
22 lawsuit. Those other actions were filed after NYWCB's action brought the situation to the  
23 attention of the public in general. Yet, Dahlquist does not treat them the same as the NY  
24 Litigation.

25 98. Finally, Dahlquist states that Majestic failed to properly administer its

1 liabilities and assets and did nothing to stop the company's decline when it began in December  
2 2009. *See* Dahlquist Declaration paragraph 8(e). Nothing could be further from the truth, and, as  
3 indicated above, it was the conduct of the Conservator and CADOI which perpetuated Majestic's  
4 decline.

5  
6 99. In fact, as soon as AMBest downgraded Majestic because of the NY  
7 Litigation, Majestic approached the NYWCB and the Office of the Attorney General of New  
8 York State about settlement.

9 100. Moreover, upon information and belief, Majestic management immediately  
10 engaged in discussions with AMBest and convinced it to hold off a further downgrading of  
11 Majestic pending settlement negotiations with the NYWCB.

12 101. In July 2010, the NYWCB and Majestic resolved the NY Litigation via a  
13 Memorandum of Understanding ("MOU") in a way acceptable to Majestic, NYWCB, and the  
14 then proposed purchaser, Bayside.

15 102. The settlement outlined in the MOU would have eliminated the source of  
16 AMBest's downgrade, thereby restoring the premium inflow to Majestic. This would have  
17 eliminated the majority of the basis for the conservation. The settlement, however, was subject to  
18 the approval of the CADOI.

19 103. Instead, and detailed above, as a direct result of CADOI's inaction for nine  
20 months, Bayside withdrew from the transaction.

21 104. In the face of the NY Litigation's nexus to the instant proceeding, the Plan  
22 excludes the NYWCB's claims from the liabilities of Majestic that AmTrust will assume.

23 105. The total exclusion of the NYWCB's claims from the Plan, coupled with  
24 the transfer to AmTrust of the overwhelming majority of Majestic's assets, including all of the  
25 premiums that were paid over to Majestic by the 5350 small to mid sized employers of the NY  
26  
27  
28

1 GSITs, along with the \$35 million security deposit that is presently held by New York State under  
2 New York law, is discriminatory and an abuse of discretion.

3 106. The Plan does not “materially improve the current security position of  
4 Majestic’s [New York] policy holders.” Majestic has sufficient assets to meet the obligations of  
5 the New York Majestic policy holders, and the Plan would result in the \$35 million statutory  
6 deposit being turned over to AmTrust. Therefore, in reality, the Plan materially decreases the  
7 protection for claimants in New York.  
8

9 **THE NYWCB BELIEVES THE \$46.4 MILLION RESERVE ADJUSTMENT**  
10 **CLAIMED BY CADOI IS INFLATED AND MAJESTIC IS NOT INSOLVENT.**  
11 **THEREFORE, PRIOR TO APPROVING THE PLAN, THE COURT SHOULD ORDER**  
12 **LIMITED DISCOVERY AND HOLD AN EVIDENTIARY HEARING**  
13 **TO DETERMINE MAJESTIC’S TRUE RESERVE LEVELS.**

14 107. The only basis for the instant proceeding that is not directly tied to the NY  
15 Litigation is the alleged \$46.4 million underfunding of reserves.

16 108. However, upon information and belief, no increase in Majestic’s reserves is  
17 necessary and the only party who believes the accuracy of this figure is CADOI.

18 109. Clearly Majestic does not believe the accuracy of this figure. In fact  
19 Majestic has refused to adjust its reserves to reflect this figure. Moreover, at pages 72-73 of its  
20 most recent 10k filing dated April 22, 2011, Majestic specifically states that they believe no  
21 reserve adjustment at all is warranted. That filing is available through the internet at  
22 [http://files.shareholder.com/downloads/CRMH/1256214565x0xS1437749-11-](http://files.shareholder.com/downloads/CRMH/1256214565x0xS1437749-11-2503/1338949/filing.pdf)  
23 [2503/1338949/filing.pdf](http://files.shareholder.com/downloads/CRMH/1256214565x0xS1437749-11-2503/1338949/filing.pdf).

24 110. Specifically, in debunking the claimed deficiency, Majestic notes that the  
25 Dahlquist report is premised on an extraordinary large increase in tail development (claims over 8  
26 years old) when over 25 years of actual historical claims development dictates no such tail  
27 development will materialize.  
28

1           111. Majestic also notes at page 73 of its most recent 10k that the CADOI study  
2 relies exclusively on industry-based factors and does not use any of the traditional actuarial  
3 methodologies to arrive at its figures.

4           112. Equally telling is the fact that AmTrust is willing to accept only \$26  
5 million of the alleged \$46 million reserve deficiency.  
6

7           113. While it is alleged that the \$26 million is simply the present value of the  
8 \$46 million, it is very telling that AmTrust apparently was unwilling to accept the present value  
9 of the reserves currently held by Majestic. The implication is that AmTrust agrees with current  
10 level of reserves held by Majestic, or at worst, feels there is some much smaller reserves increase  
11 necessary.  
12

13           114. Finally, the simple fact that the reserve deficiency was determined to be  
14 \$46 million, the exact amount of all of Majestic's assets, when viewed together with all of  
15 CADOI's other conduct detailed above, makes it inherently incredible.

16           115. Moreover, if the \$46.4 million increase in reserves is accurate, rather than  
17 ordering New York to turn over its statutory deposit, the Court should order that the deposit be  
18 increased by that portion of the claimed \$46.4 million reserve deficiency attributable to New  
19 York claims.  
20

21           116. There is ample evidence that the Conservator has inflated Majestic's  
22 reserved deficiency in order to justify the Plan. When this point is considered together with the  
23 preferential deal being given to AmTrust, which the NYWCB believes is based largely on  
24 AmTrust's commitment to keep jobs and resources in California, the validity of this proceeding  
25 and the Plan are called into serious question. The Court should allow a period of limited  
26 discovery with respect to Majestic's reserve deficiency.  
27  
28

1                   **THE COURT SHOULD STRIKE SECTION 7.1(C) FROM THE PLAN**  
2                   **AND ORDER FURTHER PROCEEDINGS TO DETERMINE**  
3                   **THE NATURE OF THE NYWCB'S CLAIMS.**

4                   117. The Conservator has prematurely decided the merit and category of the  
5 NYWCB claims. Section 7.1(c) of the Plan specifically excludes the NYWCB's claims from the  
6 liabilities and claims that AmTrust would assume. In pertinent part, that provision excludes:

7                               any claim against Majestic made by or on behalf of a group  
8                               self-insurer or group self-insured trust or related to the  
9                               administration of a group self-insurer or group self-insured  
10                              trust arising from the issuance by Majestic of an excess  
11                              insurance contract to such group self-insurer or group self-  
12                              insured trust (other than for payment in accordance with its  
13                              terms and conditions), regardless of the theory of liability or  
14                              damages sought.

15                   *See Declaration of David E. Wilson, Exhibit 2 at p. 19.*

16                   118. If the Court approves the Plan, then all claimants will present their claims  
17 for payment to the Conservator. At that time, the Conservator will review the claims and  
18 determine whether those claims are policy holder or general creditor claims. The nature and  
19 category of those claims cannot be determined until they are presented to the Conservator.

20                   119. The nature of the NYWCB's claims can only be determined after the  
21 development of a full record. Therefore, the nature of the NYWCB's claims is not presently  
22 before the Court. Since the claims have not been presented, the Court should strike the above  
23 language from the Plan.

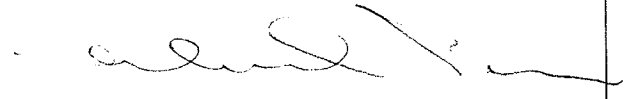
24                   120. The NYWCB has a large stake in the outcome of these proceedings, both  
25 as successor in interest to Trusts and in its regulatory capacity. The NYWCB can demonstrate  
26 \$472 million in actual damages based on the conduct of CRM and Majestic. The outcome of this  
27 proceeding will have a profound effect on the Trusts, the 5350 small to mid sized employers that  
28 make up the Trusts, the NYWCB, and the people of the State of New York.

1                   121. The NYWCB's functions, duties, and powers are analogous to those of the  
2 Conservator and the CADOI. The NYWCB has reviewed Majestic's financial status, reviewed  
3 the Plan and the documents in support thereof, and held numerous discussions with officers of  
4 Majestic, both before and after this proceeding was commenced. The NYWCB has also held  
5 lengthy substantive discussions with the Conservator and the CADOI before and after this  
6 proceeding was commenced. The NYWCB has a level of expertise with respect to this matter  
7 that is commensurate with the Conservator's. Based on that experience and expertise, these  
8 proceedings are premature.  
9

10                   122. A better solution than the Plan – a solution that would not allow for the  
11 partial liquidation of Majestic – would be for the Conservator and the CADOI to approve a  
12 settlement of the NY Litigation. The NYWCB believes that settlement is still possible and has  
13 been open to resolving this matter for several months. A settlement would allow for Majestic to  
14 move on from the NY Litigation, improve its AM Best rating, and rebuild its revenues and book  
15 of business without the drastic step of liquidating its business. While the Plan is styled as a  
16 rehabilitation, it is, in fact a liquidation of Majestic's business. Majestic will no longer exist and  
17 millions of dollars in claims against Majestic will go unpaid, prejudicing the NYWCB, and all  
18 other policyholders and creditors of Majestic.  
19

20                   123. Alternatively, in light of the Conservator's conduct relative to the  
21 settlement of the New York Litigation, the Court should direct that additional assets be left in  
22 Majestic and be available for claimants to cover a portion of the excluded liabilities.  
23  
24  
25  
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28

1 I declare under penalty of perjury under the laws of the State of California that the  
2 foregoing is true and correct. Executed on May 18, 2011, at Albany, New York.

3  
4   
5 \_\_\_\_\_  
6 Michael Papa

1 **PROOF OF SERVICE**

2 I, Luana R. Washington, declare as follows:

3 I am employed in Los Angeles County, Los Angeles, California. I am over the  
4 age of eighteen years and not a party to this action. My business address is MANATT, PHELPS  
& PHILLIPS, LLP, 11355 West Olympic Boulevard, Los Angeles, California 90064-1614.  
5 On May 20, 2011, I served the within:

6 **DECLARATION OF MICHAEL PAPA IN SUPPORT OF**  
7 **NEW YORK STATE WORKERS' COMPENSATION**  
8 **BOARD'S OBJECTIONS TO THE PROPOSED**  
9 **REHABILITATION PLAN FOR MAJESTIC**  
10 **INSURANCE COMPANY**

11 on the interested parties in this action addressed as follows:

12 **SEE ATTACHED SERVICE LIST**




14 (BY OVERNIGHT MAIL) By placing such document(s) in a sealed envelope,  
15 for collection and overnight mailing at Manatt, Phelps & Phillips, LLP,  
16 Los Angeles, California following ordinary business practice. I am readily familiar  
17 with the practice at Manatt, Phelps & Phillips, LLP for collection and processing  
18 of overnight service mailing, said practice being that in the ordinary course of  
19 business, correspondence is deposited with the overnight messenger service,  
20 Federal Express, for delivery as addressed.



22 (BY ELECTRONIC MAIL) By transmitting such document(s) electronically  
23 from my e-mail address, LWashington@manatt.com at Manatt, Phelps & Phillips,  
24 LLP, Los Angeles, California, to the person(s) at the electronic mail addresses  
25 listed above. The transmission was reported as complete and without error.

26 I declare under penalty of perjury under the laws of the State of California that  
27 the foregoing is true and correct and that this declaration was executed on May 20, 2011, at  
28 Los Angeles, California.

29   
30 Luana R. Washington



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