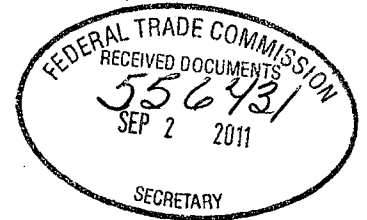


UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

ORIGINAL



In the Matter of

ProMedica Health System, Inc.,
a corporation.

Docket No. 9346

PUBLIC DOCUMENT

**MOTION OF NON-PARTY AMBAC ASSURANCE CORPORATION
FOR *IN CAMERA* TREATMENT OF HEARING TRANSCRIPT**

Ambac Assurance Corporation (“*Ambac*”), which is not a party to the above-captioned action, respectfully requests an order granting *in camera* treatment of several portions of the August 11, 2011 testimony of Bruce Gordon in these proceedings (the “Gordon Testimony”). Some portions of the Gordon Testimony (pages 6819:1-6846:21 and 6863:1-6878:24) were held *in camera* at the August 11 hearing. Ambac agrees that the portions of the Gordon Testimony that were held *in camera* at the August 11 hearing should remain *in camera*. By this motion, supported by the accompanying Declaration of Stephen P. Rochford,¹ Ambac additionally requests *in camera* treatment for the portions of the Gordon Testimony discussed below.

By order dated May 25, 2011 (the “*May 25 Order*”), Chief Administrative Law Judge Chappell granted Ambac’s motion for *in camera* treatment of certain documents and deposition excerpts that Complaint Counsel and Respondent ProMedica Health System, Inc. (“*ProMedica*”) had designated for possible introduction in the

¹ Exhibit A hereto, Declaration of Stephen P. Rochford in Support of Motion of Non-Party Ambac Assurance Corporation for *In Camera* Treatment of Hearing Transcript (“*Rochford Declaration*.”), with Exhibits 1 through 7.

administrative trial in this matter. Ambac now seeks *in camera* treatment for certain excerpts of the Gordon Testimony that were not held *in camera* during the August 11 hearing but that contain the same or similar information as the materials that were held *in camera* by the May 25 Order. In particular, Ambac seeks *in camera* treatment for the following Gordon Testimony excerpts, which are attached as Exhibits 1 through 7 to the Rochford Declaration:

- 6790:4-18 (Exhibit 1)
- 6791:9-14 (Exhibit 2)
- 6801:20-6805:21 (Exhibit 3)
- 6850:8-6852:15 (Exhibit 4)
- 6854:7-6855:19 (Exhibit 5)
- 6856:13-6861:19 (Exhibit 6)
- 6879:7-6883:10 (Exhibit 7)

These excerpts contain competitively sensitive information of Ambac that Ambac holds in strict confidence. Public disclosure of this information is likely to cause direct, serious harm to Ambac's competitive position. Therefore, pursuant to 16 C.F.R. § 3.45(b), Ambac respectfully requests that, like the materials addressed in the May 25 Order, the above Gordon Testimony excerpts be held *in camera* for a period of five years.

**AMBAC'S CONFIDENTIAL MATERIALS DESERVE
IN CAMERA TREATMENT UNDER THE FEDERAL TRADE
COMMISSION'S RULES OF PRACTICE**

Under 16 C.F.R. § 3.45(b), requests for *in camera* treatment must show that public disclosure of the document in question "will result in a clearly defined, serious injury to the person or corporation whose records are involved." *H.P. Hood & Sons, Inc.*, 58 F.T.C. 1184, 1188 (1961). That showing can be made by establishing that the materials in question are "sufficiently secret and sufficiently material to the applicant's business that disclosure would result in serious competitive injury." *In re General Foods*

Corp., 95 F.T.C. 352, 355 (1980). In this context, “courts have generally attempted to protect confidential business information from unnecessary airing.” *Hood*, 58 F.T.C. at 1188.

A. Ambac Has Preserved the Confidentiality of the Gordon Testimony Excerpts

Ambac has taken significant steps to protect the confidentiality of the information contained in the Gordon Testimony excerpts. In addition to moving for *in camera* treatment of the documents and deposition testimony that were the subject of the May 25 Order, Ambac has produced information in these proceedings only pursuant to compulsory process and seeking confidential treatment under the Protective Order Governing Discovery Material issued in this matter on January 6, 2011 (the “*Protective Order*”). See Motion of Non-Party Ambac Assurance Corporation for *In Camera* Treatment of Documents and Testimony (filed May 5, 2011). The express purpose of the Protective Order includes “protecting the interests of...the third parties in the above-captioned matter against the improper use and disclosure of confidential information submitted or produced in connection with this matter.” Protective Order, Preamble.

In addition to these measures, Ambac has taken substantial steps to guard the secrecy of the information contained in the Gordon Testimony excerpts, limiting dissemination of such information and taking every reasonable step to protect its confidentiality. Rochford Declaration, *passim*. It would be extremely difficult for Ambac's competitors or other outside persons to access or recreate the information contained in the materials at issue. *Id.* These efforts demonstrate that Ambac has gone to great lengths to preserve the confidentiality of the information contained in the Gordon Testimony excerpts.

B. Disclosure of the Information in Gordon Testimony Excerpts Would Result in Serious Competitive Injury To Ambac

For purposes of this analysis, the disclosure of confidential business information results in "serious injury" when the information in question is both secret and material to the business of the information's owner. *See General Foods*, 95 F.T.C. at 355. In evaluating the secrecy and materiality of a corporation's information, the Commission may consider the following factors, among others: (1) the extent to which the information is known outside of the corporation; (2) the extent to which it is known by the corporation's employees and others involved in the corporation's business; (3) the extent of measures taken by the corporation to guard the secrecy of the information; (4) the value of the information to the corporation and to its competitors; (5) the amount of effort or money expended by the corporation in developing the information; (6) the ease or difficulty with which the information could be properly acquired or duplicated by others. *See In re Bristol-Myers*, 90 F.T.C. 455, 456 (1977). Each of these factors weighs in favor of *in camera* treatment in this case.

Disclosure of the materials for which Ambac seeks *in camera* treatment would result in serious competitive harm to Ambac because Ambac's remediation and loss-mitigation practices are the critical means by which Ambac maximizes the value of its portfolio and thus its ability to pay claims to policyholders on its insured bonds. Rochford Decl. at ¶ 4. Due to the loss of Ambac's AAA rating, the consequent loss Ambac's ability to write new financial guaranty insurance policies, and the commencement by the Office of the Commissioner of Insurance of the State of Wisconsin of a statutory rehabilitation of the Segregated Account of Ambac Assurance Corporation in Wisconsin state court, the need to preserve Ambac's negotiating

advantage with debtors is critical at this time. *See id.* at ¶¶ 3 and 4. It is therefore imperative for Ambac not to jeopardize or impair its ability to negotiate remediation and loss-mitigation arrangements with debtors. *Id.* at ¶ 4.

All of the Gordon Testimony excerpts for which Ambac seeks *in camera* treatment relate either to Ambac's monitoring and analysis of entities whose bonds it insures (i.e. debtors) or to the development and implementation of negotiating positions and strategies vis-à-vis these debtors:

- Exhibits 1, 2, 5, and 6 to the Rochford Declaration disclose details about Ambac's approach to measuring a debtor's operating performance. Rochford Decl. at ¶¶ 7, 8, 11, and 12.
- Exhibits 3, 4, and 6 to the Rochford Declaration contain detailed information about Ambac's decision making processes, options, and strategic considerations in negotiating with financially troubled debtors. Rochford Decl. at ¶¶ 9, 10, and 12.
- Exhibits 5, 6 and 7 to the Rochford Declaration disclose the specific criteria employed by Ambac to evaluate St. Luke's Hospital as a credit risk and describe management's recommendations concerning Ambac's rating of, and future dealings with, St. Luke's. Rochford Decl. at ¶¶ 11, 12, and 13.

Ambac keeps in strict confidence the kind of information about its business contained in these excerpts. *See* Rochford Decl. at ¶¶ 6-13. As to information concerning Ambac's monitoring and analysis of entities whose bonds it insures (*i.e.*, Exhibits 1, 2, and 5-7), Ambac keeps this information in strict confidence because it would be seriously harmful to Ambac if this type of information fell into the hands of competitors or other debtors,

including, for example, hampering Ambac's ability to evaluate information provided by current and future debtors and harming Ambac's effectiveness in developing and implementing effective remediation and loss-mitigation strategies for its portfolio of health care-related bonds. *See* Rochford Decl. at ¶¶ 7,8, and 11-13. As to information concerning Ambac's development and implementation of negotiating positions and strategies vis-à-vis these debtors (*i.e.*, Exhibits 3, 4, 6, and 7), Ambac keeps this information in strict confidence because it would be seriously harmful to Ambac's ability to evaluate the information provided by current and prospective debtors, and to negotiate with and uncover useful information about troubled debtors, if debtors were aware in advance of this type of information. *See* Rochford Decl. at ¶¶ 9, 10, 12, and 13.

It would be very difficult for Ambac's competitors or other debtors to obtain this kind of information about Ambac from independent sources. *See* Rochford Decl. at ¶¶ 6-13. Ambac does not share this information with other parties in the ordinary course of business, and Ambac devotes considerable resources to developing the evaluation criteria disclosed in these materials. *Id.*

C. The Public Interest in Disclosure of the Gordon Testimony Excerpts is Outweighed by the Likelihood of Serious Competitive Harm to Ambac

As a non-party requesting *in camera* treatment of confidential, competitively sensitive business information, Ambac deserves "special solicitude" in these proceedings. *In the Matter of Kaiser Aluminum & Chemical Corporation*, 103 F.T.C. 500, 500 (1984) (order directing *in camera* treatment for sales statistics over five years old). Granting *in camera* treatment of confidential, competitively sensitive information for a reasonable period encourages non-parties to cooperate with future discovery requests in adjudicative

proceedings. *Id.* Indeed, Ambac has cooperated with the parties' efforts to meet the evidentiary demands of this case.

Conversely, disclosing documents containing Ambac's highly confidential information will not materially promote the resolution of this matter, nor will unrestricted disclosure of that information add measurably to the public's understanding of these proceedings. Ambac is in an entirely different business from the parties to the transaction under scrutiny (*see* Rochford Decl. at ¶ 3) and none of its confidential materials discusses, or sheds any light upon, competitive conditions in the markets under investigation. Thus, the balance of interests clearly favors *in camera* protection for the Gordon Testimony excerpts in this case.

D. Protection for the Gordon Testimony Excerpts Should Extend For Five Years

The highly confidential nature of the information contained in the Gordon Testimony excerpts warrants lasting protection. Ambac's negotiating options and strategies in dealing with debtors in financial difficulty are vital to Ambac's competitive position and business strategy. *See* Rochford Decl., *passim*. Accordingly, Ambac respectfully requests that the Gordon Testimony excerpts identified above be afforded *in camera* protection for a period of five years.

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CONCLUSION

For the foregoing reasons, Ambac respectfully requests that the Gordon Testimony excerpts identified above be granted *in camera* treatment for a period of five years.

Dated: September 2, 2011

Respectfully submitted,



Paolo Morante (Bar No. 462079)
DLA Piper LLP (US)
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New York, NY 10020
Tel. (212) 335-4813
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Counsel for Non-Party Ambac Assurance Corporation

and federal court personnel concerned with judicial review of this matter may have access to the above-referenced materials; AND PROVIDED, FURTHER, that the undersigned, the Commission, and reviewing courts may disclose such *in camera* information to the extent necessary for the proper disposition of this proceeding.

ORDERED:

D. Michael Chappell
Chief Administrative Law
Judge

DATED: _____

CERTIFICATE OF SERVICE

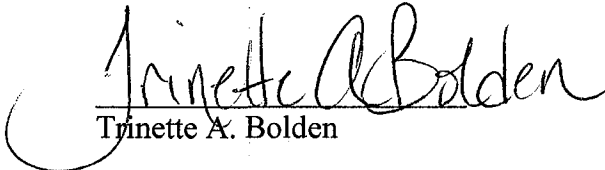
I hereby certify that, on this 2nd day of September, 2011, I caused true and complete copies of the public and non-public versions of the foregoing Motion of Non-Party Ambac Assurance Corporation for *In Camera* Treatment of Hearing Transcript, with accompanying Declaration of Stephen P. Rochford in Support of the Motion of Non-Party Ambac Assurance Corporation for *In Camera* Treatment of Hearing Transcript, with Exhibits 1 through 7, and Proposed Order, to be served upon the following counsel of record as follows: (a) as to the public versions only, through the Federal Trade Commission's electronic filing system; and (b) as to both public and non-public versions, by U.S. mail at the following addresses:

Jeanne H. Liu
Mergers IV
Bureau of Competition
Federal Trade Commission
601 New Jersey Avenue, N.W.
Washington, D.C. 20001
Tel.: (202) 326-3450

Vincent C. van Panhuys
McDermott Will & Emery LLP
600 13th Street, N.W.
Washington, DC 20005-3096
Tel.: (202) 756-8667

On this 2nd day of September, 2011, I also caused two courtesy copies of the foregoing materials to be hand-delivered to:

The Hon. D. Michael Chappell
Chief Administrative Law Judge
Federal Trade Commission
Room H-104
600 Pennsylvania Avenue, NW
Washington, DC 20580


Trinetta A. Bolden

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

In the Matter of

ProMedica Health System, Inc.,
a corporation.

Docket No. 9346

PUBLIC DOCUMENT

**DECLARATION OF STEPHEN P. ROCHFORD IN SUPPORT OF
MOTION OF NON-PARTY AMBAC ASSURANCE CORPORATION
FOR *IN CAMERA* TREATMENT OF HEARING TRANSCRIPT**

I, Stephen P. Rochford, hereby declare as follows:

1. I am a Managing Director of the Health Care and Housing Portfolio Risk Management Group at Ambac Assurance Corporation (“*Ambac*”). I make this declaration in support of the Motion of Non-Party Ambac Assurance Corporation for *In Camera* Treatment of Hearing Transcript. I have personal knowledge of the matters stated herein and, if called upon to do so, could competently testify about them.

2. I have held the position of Managing Director of the Health Care and Housing Portfolio Risk Management Group for nearly one year. Prior to my current position, I held various positions in the Health Care Portfolio Risk Management Group at Ambac since 2001, including managing this group since 2005. In my role as Managing Director, I am responsible for the groups at Ambac that monitor the not-for-profit health care obligors and housing-related obligors on whose bonds Ambac issued financial guarantee insurance policies. As it pertains specifically to Ambac’s health care portfolio, I am and have been responsible for Ambac’s surveillance, remediation and loss-mitigation efforts with respect to its portfolio of health care-related bonds. As such, I am familiar with Ambac’s surveillance of the healthcare entities whose bonds it insures and with Ambac’s efforts, processes, and strategies with regard to remediating

its healthcare portfolio, such as negotiating amendments and waivers with health care issuers who are or may be in breach of certain covenants in their bond documents.

3. Ambac is in the business of providing financial guarantees and financial services to both public and private clients. Neither Ambac nor any of its affiliates is in the business of providing inpatient hospital services. Due in large part to substantial losses on policies related to residential mortgage backed securities, Ambac lost its AAA rating and, as a result, the ability to write new financial guaranty insurance policies. Last year, at the initiation of the Office of the Commissioner of Insurance of the State of Wisconsin (where Ambac is domiciled) a "segregated account" was established into which certain of Ambac's policies (generally its most impaired policies) have been placed, and this segregated account, the Segregated Account of Ambac Assurance Corporation, was placed in statutory rehabilitation in Wisconsin state court. (*In the Matter of the Rehabilitation of the Segregated Account of Ambac Assurance Corp.* (Circuit Court, Dane County, Case No. 10 CV 1576).)

4. I have reviewed the hearing transcript excerpts for which Ambac seeks *in camera* treatment. By virtue of my current and former positions at Ambac, as described above, and my familiarity with the confidentiality protections afforded by Ambac to the type of information contained in these materials, I believe that disclosure of these hearing transcript excerpts to the public, to Ambac's competitors, to obligors for which Ambac had issued financial guarantee insurance policies with whom Ambac is or will negotiate an amendment or waiver, or to ProMedica's business personnel would cause serious competitive injury to Ambac. As detailed below, the materials for which Ambac seeks *in camera* treatment contain important information relating to Ambac's remediation and loss mitigation practices, which are the critical means by which Ambac maximizes the value of its portfolio and thus its ability to pay claims to

policyholders on its insured bonds. The need to preserve Ambac's negotiating advantage with debtors in the context of remediation and loss-mitigation is critical now because of Ambac's loss of its AAA credit rating and the ability to write new financial guaranty insurance policies, and the above-referenced statutory rehabilitation proceeding. It is therefore imperative for Ambac not to jeopardize or impair its ability to negotiate remediation and loss-mitigation arrangements with debtors.

5. From on or around November 2007 to on or around October 2010, Bruce E. Gordon was First Vice President, Public Finance Risk Management, at Ambac. Mr. Gordon's responsibilities included monitoring the not-for-profit health care obligors for which Ambac had issued financial guarantee insurance policies for bonds.

6. Exhibits 1 through 7 hereto are excerpts from the transcript of Bruce Gordon's testimony in these proceedings on August 11, 2011 (the "Gordon Testimony"). A copy of the Gordon Testimony was provided to Ambac by counsel for Respondent ProMedica on August 22, 2011. In each of Exhibits 1 through 7, Ambac has underlined the portions of the Gordon Testimony that are relevant to Ambac's motion.

7. Exhibit 1 hereto includes lines 6790:4-18 of the Gordon Testimony, which disclose details about Ambac's approach to measuring a debtor's operating performance. Ambac keeps this kind of information about its business in strict confidence because it would be seriously harmful to Ambac's ability to evaluate the information provided by current and prospective debtors, and thus would erode Ambac's competitive edge, if debtors were aware in advance of this type of information, or if competitors of Ambac were privy to this type of information. It would be very difficult for Ambac's competitors or other debtors to obtain this kind of information about Ambac from independent sources. Ambac does not share this

information with other parties in the ordinary course of business. Ambac devotes considerable resources to developing the evaluation criteria disclosed in this Exhibit.

8. Exhibit 2 hereto includes lines 6791:9-14 of the Gordon Testimony, which disclose details about Ambac's approach to measuring a debtor's operating performance. Ambac keeps this kind of information about its business in strict confidence because it would be seriously harmful to Ambac's ability to evaluate the information provided by current and prospective debtors, and thus would erode Ambac's competitive edge, if debtors were aware in advance of this type of information, or if competitors of Ambac were privy to this type of information. It would be very difficult for Ambac's competitors or other debtors to obtain this kind of information about Ambac from independent sources. Ambac does not share this information with other parties in the ordinary course of business. Ambac devotes considerable resources to developing the evaluation criteria disclosed in this Exhibit.

9. Exhibit 3 hereto includes lines 6801:20-6805:21 of the Gordon testimony, which contain detailed information about Ambac's decision making processes, options, and strategic considerations in negotiating with financially troubled debtors. Ambac keeps this kind of information about its business in strict confidence because it would be seriously harmful to Ambac if this type of information fell into the hands of competitors or other debtors, including, for example, harming Ambac's effectiveness in developing and implementing effective remediation and loss-mitigation strategies for its portfolio of health care-related bonds. It would be very difficult for Ambac's competitors or other debtors to obtain this kind of information about Ambac from independent sources. Ambac does not share this information with other parties in the ordinary course of business. Ambac devotes considerable resources to developing the negotiating strategies disclosed in this Exhibit.

10. Exhibit 4 hereto includes lines 6850:8-6852:15 of the Gordon testimony, which contain detailed information about Ambac's decision making processes, options, and strategic considerations in negotiating with financially troubled debtors. Ambac keeps this kind of information about its business in strict confidence because it would be seriously harmful to Ambac if this type of information fell into the hands of competitors or other debtors, including, for example, harming Ambac's effectiveness in developing and implementing effective remediation and loss-mitigation strategies for its portfolio of health care-related bonds. It would be very difficult for Ambac's competitors or other debtors to obtain this kind of information about Ambac from independent sources. Ambac does not share this information with other parties in the ordinary course of business. Ambac devotes considerable resources to developing the negotiating strategies disclosed in this Exhibit.

11. Exhibit 5 hereto includes lines 6854:7-6855:19 of the Gordon Testimony, which disclose details about Ambac's approach to measuring a debtor's operating performance, reveal specific criteria employed by Ambac to evaluate St. Luke's Hospital as a credit risk and describe management's assessment of St. Luke's as a credit risk. Ambac keeps this kind of information about its business in strict confidence because it would be seriously harmful to Ambac's ability to evaluate the information provided by current and prospective debtors, and thus would erode Ambac's competitive edge, if debtors were aware in advance of this type of information, or if competitors of Ambac were privy to this type of information. It would be very difficult for Ambac's competitors or other debtors to obtain this kind of information about Ambac from independent sources. Ambac does not share this information with other parties in the ordinary course of business. Ambac devotes considerable resources to developing the evaluation criteria disclosed in this Exhibit.

12. Exhibit 6 hereto includes lines 6856:13-6861:19 of the Gordon Testimony, which disclose details about Ambac's approach to measuring a debtor's operating performance, contain detailed information about Ambac's decision making processes, options, and strategic considerations in negotiating with financially troubled debtors, reveal the specific criteria employed by Ambac to evaluate St. Luke's Hospital as a credit risk and describe management's recommendations concerning Ambac's rating of, and future dealings with, St. Luke's Hospital. Ambac keeps this kind of information about its business in strict confidence because it would be seriously harmful to Ambac if this type of information fell into the hands of competitors or other debtors, including, for example, harming Ambac's effectiveness in developing and implementing effective remediation and loss-mitigation strategies for its portfolio of health care-related bonds. It would also seriously harm Ambac's ability to evaluate the information provided by current and prospective debtors, and thus would erode Ambac's competitive edge, if debtors were aware in advance of this type of information, or if competitors of Ambac were privy to this type of information. It would be very difficult for Ambac's competitors or other debtors to obtain this kind of information about Ambac from independent sources. Ambac does not share this information with other parties in the ordinary course of business. Ambac devotes considerable resources to developing the evaluation criteria disclosed in this Exhibit.

13. Exhibit 7 hereto includes lines 6879:7-6883:10 of the Gordon Testimony, which reveal the specific criteria employed by Ambac to evaluate St. Luke's as a credit risk and describe management's recommendations concerning Ambac's rating of, and future dealings with, St. Luke's Hospital. Ambac keeps this kind of information about its business in strict confidence because it would be seriously harmful to Ambac if this type of information fell into the hands of competitors or other debtors, including, for example, harming Ambac's

effectiveness in developing and implementing effective remediation and loss-mitigation strategies for its portfolio of health care-related bonds. It would also seriously harm Ambac's ability to evaluate the information provided by current and prospective debtors, and thus would erode Ambac's competitive edge, if debtors were aware in advance of this type of information, or if competitors of Ambac were privy to this type of information. It would be very difficult for Ambac's competitors or other debtors to obtain this kind of information about Ambac from independent sources. Ambac does not share this information with other parties in the ordinary course of business. Ambac devotes considerable resources to developing the evaluation criteria disclosed in this Exhibit.

I declare under penalty of perjury that the foregoing is true and correct. Executed on September 2, 2011.


Stephen P. Rochford

EXHIBIT 1
[REDACTED]

EXHIBIT 2
[REDACTED]

EXHIBIT 3
[REDACTED]

EXHIBIT 4
[REDACTED]

EXHIBIT 5
[REDACTED]

EXHIBIT 6
[REDACTED]

EXHIBIT 7
[REDACTED]