



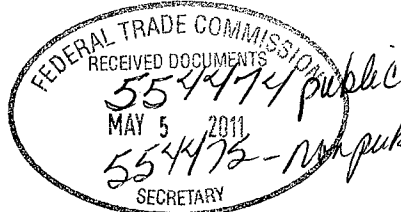
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**ORIGINAL**

May 5, 2011

BY HAND



The Hon. Donald S. Clark  
Secretary  
Federal Trade Commission  
600 Pennsylvania Avenue, N.W.  
Washington, D.C. 20580

**Re: In re ProMedica Health System, Inc. – Docket No. 9346**

Dear Secretary Clark:

On behalf of non-party Ambac Assurance Corporation we submit, under cover of this letter, a public version of the following materials for filing in the above-referenced matter:

1. Motion of Non-Party Ambac Assurance Corporation for *In Camera* Treatment of Proposed Evidence;
2. Declaration of Stephen P. Rochford in Support of Motion of Non-Party Ambac Assurance Corporation for *In Camera* Treatment of Proposed Evidence, with Exhibits 1 through 27; and
3. Proposed Order.

Two courtesy copies of these papers and of their non-public versions are being hand-delivered today to Chief Administrative Law Judge D. Michael Chappell, and a copy of both public and non-public versions of these materials is also being served on Complaint Counsel and counsel for Respondent, ProMedica Health System, Inc.

Please acknowledge receipt of these materials by date-stamping the enclosed copy of this letter as "received" and returning it with cour messenger. Thank you.

The Hon. Donald S. Clark  
May 5, 2011  
Page Two

Very truly yours,

**DLA Piper LLP (US)**

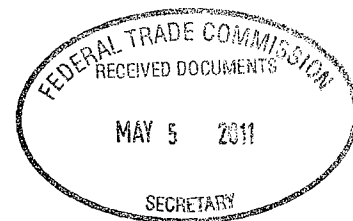
A handwritten signature in black ink, appearing to read 'Paolo Morante', with a long horizontal stroke extending to the right.

Paolo Morante

cc: Hon. D. Michael Chappell  
Jeanne H. Liu  
Christine G. Devlin

**ORIGINAL**

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



In the Matter of

ProMedica Health System, Inc.,  
a corporation.

Docket No. 9346

**MOTION OF NON-PARTY AMBAC ASSURANCE CORPORATION  
FOR *IN CAMERA* TREATMENT OF PROPOSED EVIDENCE**

Ambac Assurance Corporation ("*Ambac*"), which is not a party to the above-captioned action, respectfully requests that the Commission grant *in camera* treatment of several documents and deposition excerpts that Complaint Counsel and Respondent ProMedica Health System, Inc. ("*ProMedica*") have designated for possible introduction in the administrative trial in this matter. By letter dated April 28, 2011, Complaint Counsel notified Ambac that it intends to introduce into evidence certain documents produced by Ambac in response to a subpoena issued by the Commission, and certain excerpts from the March 28, 2011 deposition of Ambac's former employee Bruce E. Gordon in this matter (the "*Gordon Deposition*"). By a separate letter dated April 28, 2011, ProMedica notified Ambac that ProMedica intends to introduce into evidence certain documents produced by Ambac in response to a subpoena issued by ProMedica in this matter and certain excerpts from the Gordon Deposition.

The Ambac documents designated by ProMedica for possible introduction into evidence include, among others, the following documents, which are attached as exhibits

to the Declaration of Stephen P. Rochford in support of this Motion (the "*Rochford Decl.*," Exhibit A hereto):

- AMB00343-45 (Exhibit 1)
- AMB00348-50 (Exhibit 2)
- AMB00389 (Exhibit 3)
- AMB00433-35 (Exhibit 4)
- AMB02693 (Exhibit 5)
- AMB02694 (Exhibit 6)
- AMB02696 (Exhibit 7)
- AMB02920-21 (Exhibit 8)
- AMB02922-30 (Exhibit 9)
- AMB02954-55(Exhibit 10)
- AMB03146-49 (Exhibit 11)

As evidenced on the face of these documents, Ambac marked each of them as "Confidential" when it produced them in response to the above-referenced subpoenas.

The Gordon Deposition excerpts designated by Complaint Counsel and/or ProMedica for possible introduction into evidence include, among others, the following excerpts, which are attached as exhibits to the Rochford Declaration:

- 26:18 to 30:12 (Exhibit 12)
- 34:9 to 37:11 (Exhibit 13)
- 61:8-16 (Exhibit 14)
- 67:22 to 69:8 (Exhibit 15)
- 70:9-13 (Exhibit 16)
- 70:22 to 71:3 (Exhibit 17)
- 72:24 to 73:18 (Exhibit 18)
- 76:11-19 (Exhibit 19)
- 79:1-22 (Exhibit 20)
- 112:12 to 116:19 (Exhibit 21)
- 118:12 to 119:12 (Exhibit 22)
- 121:17-23 (Exhibit 23)
- 135:4-25 (Exhibit 24)
- 147:24 to 148:9 (Exhibit 25)
- 149:21 to 150:6 (Exhibit 26)

The above documents and Gordon Deposition excerpts contain information that is competitively sensitive for Ambac and that Ambac holds in strict confidence. Public

disclosure of these materials is likely to cause direct, serious harm to Ambac's competitive position. Therefore, pursuant to 16 C.F.R. § 3.45(b), Ambac respectfully moves for *in camera* treatment of the confidential documents and Gordon Deposition excerpts identified in the Rochford Declaration.

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

The documents and deposition excerpts that are described in this motion warrant *in camera* treatment as provided by 16 C.F.R. § 3.45(b). 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 document in question is "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 Documents and Information**

Ambac has taken significant steps to protect the confidential nature of these materials, which, both in the case of Ambac's documents and the Gordon Deposition, were produced under compulsory process in response to subpoenas issued by the FTC and ProMedica. Ambac produced its documents expressly subject to the Protective Order Governing Discovery Material issued in this matter on January 6, 2011 (the "*Protective Order*"). See Rochford Decl. Exhibit 27, Letter from Paolo Morante to Jeanne H. Liu

(March 25, 2011) and Email from Paolo Morante to ProMedica's counsel, Christine G. Devlin (March 25, 2011). The express purpose of the Protective Order included "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 measures to guard the secrecy of the information contained in Exhibits 1 through 26, limiting dissemination of such information and taking every reasonable step to protect its confidentiality. Rochford Decl., *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 Exhibits 1 through 26.

**B. Disclosure of the Information in Exhibits 1 Through 26 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 material for which Ambac seeks *in camera* treatment relates 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, 4-8, 10, and 11 disclose details of specific terms that Ambac proposed to St. Luke's in exchange for Ambac's forbearance on St. Luke's breach of Ambac's debt coverage service test. *See Rochford Decl.* at ¶¶ 6, 7, 9-11, 13, and 14.

- Exhibits 3 and 21 disclose details of negotiations concerning Ambac's consent of the affiliation between ProMedica and St. Luke's. *See* Rochford Decl. at ¶¶ 8 and 28.
- Exhibits 8 and 9 reveal in great detail 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. *See* Rochford Decl. at ¶¶ 11 and 12.
- Exhibits 12, 13, 15, 16, 18, 20, and 21-24 contain detailed information about Ambac's decision making processes, options, and strategic considerations in negotiating with financially troubled debtors. *See* Rochford Decl. at ¶¶ 16, 17, 19, 20, 22, 24, 25-28.
- Exhibits 13 and 15-18 disclose information concerning the frequency with which Ambac opts to take one negotiating path as opposed to another in dealing with troubled debtors. *See* Rochford Decl. at ¶¶ 17 and 19-22.
- Exhibits 14 and 25 disclose details about Ambac's approach to measuring a debtor's operating performance. *See* Rochford Decl. at ¶¶ 18 and 29.
- Exhibits 19 and 26 reveal details of internal criteria Ambac employs for evaluating, raising concerns about, and deciding to investigate financially troubled debtors. *See* Rochford Decl. at ¶¶ 23 and 30.

Ambac keeps in strict confidence the kind of information about its business contained in all of these materials. *See* Rochford Decl. at ¶¶ 6-30. As to information concerning Ambac's monitoring and analysis of entities whose bonds it insures (*i.e.*, Exhibits 8, 9, 14, 19, 25 and 26), 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, 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 ¶¶ 11, 12, 18, 23, 29 and 30. As to information concerning Ambac's development and implementation of negotiating positions and strategies vis-à-vis these debtors (*i.e.*, Exhibits 1-8, 10-13, 15-18 and 20-24), 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, 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 ¶¶ 6-11, 13-14, 16-17, 19-22, and 24-28.

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 ¶¶ 6-30. 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 Exhibits 1 Through 26 is Outweighed by the Likelihood of Serious Competitive Harm to Humana**

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 discovery demands in 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 documents discusses, or sheds any light upon, competitive conditions in the markets under investigation. Thus, the balance of interests clearly favors *in camera* protection for Exhibits 1 through 26 in this case.

**D. Protection for Exhibits 1 Through 26 Should Extend For Five Years**

The nature of the highly confidential information contained in Exhibits 1 through 26 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 Exhibits 1 through 26 be afforded *in camera* protection for a period of five years.

**CONCLUSION**

For the foregoing reasons, Ambac respectfully requests that the Commission grant *in camera* treatment to Exhibits 1 through 26 for a period of five years.

Dated: May 5, 2011

Respectfully submitted,



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*Counsel for Non-Party Ambac Assurance  
Corporation*

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

In the Matter of

ProMedica Health System, Inc.,

a corporation.

Docket No. 9346

**PROPOSED ORDER**

On May 5, 2011, Non-Party Ambac Assurance Corporation (“*Ambac*”) filed a motion for *in camera* treatment of confidential business information contained in various documents and deposition excerpts that have been identified by Complaint Counsel and ProMedica as potential trial exhibits.

IT IS HEREBY ORDERED that Ambac’s motion is granted. The information set forth in the documents and deposition excerpts identified below will be subject to *in camera* treatment under 16 C.F.R. § 3.45 and will be kept confidential and not placed in the public record of this proceeding for a period of five (5) years.

**DOCUMENTS PRODUCED BY AMBAC ASSURANCE CORPORATION:**

- AMB00343-45
- AMB00348-50
- AMB00389
- AMB00433-35
- AMB02693
- AMB02694
- AMB02696
- AMB02920-21
- AMB02922 -30
- AMB02954-55
- AMB03146-49.

EXCERPTS FROM THE DEPOSITION TRANSCRIPT OF BRUCE E. GORDON (MARCH 28, 2011):

- 26:18 to 30:12
- 34:9 to 37:11
- 61:8-16
- 67:22 to 69:8
- 70:9-13
- 70:22 to 71:3
- 72:24 to 73:18
- 76:11-19
- 79:1-22
- 112:12 to 116:19
- 118:12 to 119:12
- 121:17-23
- 135:4-25
- 147:24 to 148:9
- 149:21 to 150:6.

IT IS FURTHER ORDERED that only authorized Federal Trade Commission (“*Commission*”) personnel and court personnel concerned with judicial review may have access to the above-referenced information, provided that I, the Commission, and reviewing courts may disclose such *in camera* information to the extent necessary for the proper disposition of the proceeding.

ORDERED: \_\_\_\_\_

D. Michael Chappell  
Chief Administrative Law Judge

DATED: \_\_\_\_\_



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

In the Matter of

ProMedica Health System, Inc.,

a corporation.

Docket No. 9346

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

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 Proposed Evidence. 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 the past 9 months. 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 documents and deposition excerpts for which Ambac seeks *in camera* review. 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 documents and deposition 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. Exhibit 1 hereto (AMB00343-45) is a copy of an email string that includes a January 27, 2010 email from Bruce Gordon to Dennis Wagner at St. Luke's Hospital. It discloses details of specific terms that Ambac proposed to St. Luke's in exchange for Ambac's forbearance on St. Luke's breach of Ambac's debt coverage service test. 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 position and strategy disclosed in this Exhibit.

7. Exhibit 2 hereto (AMB00348-50) is a copy of an email string that includes a January 27, 2010 email from Bruce Gordon to Dennis Wagner at St. Luke's Hospital. It discloses details of specific terms that Ambac proposed to St. Luke's in exchange for Ambac's forbearance on St. Luke's breach of Ambac's debt coverage service test. 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 position and strategy disclosed in this Exhibit.

8. Exhibit 3 hereto (AMB00389) is a copy of an email string that includes a May 5, 2010 email from Betty Lam at Kaufman Hall to Bruce Gordon. During the negotiations between Ambac and ProMedica/St.Luke's in 2009 and 2010, Kaufman Hall was the financial advisor to St. Luke's. The email discloses details of negotiations concerning Ambac's consent of the affiliation between ProMedica and St. Luke's. 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 position and strategy disclosed in this Exhibit.

9. Exhibit 4 hereto (AMB00433-35) is a copy of an email string reflecting correspondence between, on the one hand, Ambac and its representatives and, on the other hand, ProMedica and its representatives. The correspondence discloses specific terms of Ambac's forbearance and waiver agreement concerning the affiliation of ProMedica and St. Luke's. 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 position and strategy disclosed in this Exhibit.

10. Exhibits 5, 6, and 7 hereto (AMB02693, AMB02694, and AMB02696, respectively) are copies of drafts of the term sheet negotiated between Ambac and ProMedica in connection with Ambac's consent to the affiliation of ProMedica and St. Luke's. The documents reveal specific terms of Ambac's forbearance and waiver agreement concerning the affiliation of ProMedica and St. Luke's. 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 position and strategy disclosed in these Exhibits.

11. Exhibit 8 hereto (AMB02920-21) is a copy of the Amendment/Waiver Consent Form Ambac prepared with respect to St. Luke's Hospital. It reveals the specific criteria employed by Ambac to evaluate St. Luke's as a credit risk and discloses the specific terms that Ambac proposed to offer ProMedica and St. Luke's in exchange for forbearance, waiver, and consent to the affiliation of ProMedica and St. Luke's. 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 evaluation criteria and negotiating position and strategy disclosed in this Exhibit.

12. Exhibit 9 hereto (AMB02922-30) is a copy of the Surveillance Review Ambac prepared with respect to St. Luke's Hospital. It reveals in great detail the specific criteria employed by Ambac to evaluate St. Luke's as a credit risk and describes 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 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 and negotiating position and strategy disclosed in this Exhibit.

13. Exhibit 10 hereto (AMB02954-55) is a copy of the handwritten notes of Bruce Gordon concerning St. Luke's Hospital. It discloses specific contemplated terms for Ambac's forbearance and waiver agreement concerning the affiliation of ProMedica and St. Luke's. 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 position and strategy disclosed in this Exhibit.

14. Exhibit 11 hereto (AMB03146-49) contains copies of drafts of the term sheet negotiated between Ambac and ProMedica in connection with Ambac's consent to the affiliation of ProMedica and St. Luke's. The documents reveal specific terms of Ambac's forbearance and waiver agreement concerning the affiliation of ProMedica and St. Luke's. 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 position and strategy disclosed in this Exhibit.

15. Exhibits 12 through 26 hereto are excerpts from the March 28, 2011 deposition of Mr. Gordon in this matter (the "*Gordon Deposition*"). The copies of the deposition transcript provided in these exhibits were taken from a copy of the transcript provided to Ambac by Complaint Counsel on or about April 28, 2011. This is the only copy of the transcript currently available to Ambac. When Ambac received this copy of the Gordon Deposition transcript, certain portions of it were underlined, presumably to reflect those portions of the testimony that Complaint Counsel was designating to be presented by deposition. Ambac has additionally underlined portions of the testimony that Respondent has designated to be presented by deposition and for which Ambac seeks *in camera* review, to ensure that all portions of the transcript that are relevant to Ambac's motion are identified. Because Ambac does not seek *in camera* treatment for all portions of the Gordon Deposition transcript designated by Complaint Counsel, the copies in Exhibits 12 through 26 may also show underlined portions of the transcript that are not relevant to Ambac's motion. The relevant portions are therefore also identified below.

16. Exhibit 12 hereto is an excerpt from the Gordon Deposition (26:18 to 30:12). It contains detailed information about Ambac's decision making processes, options, and strategic considerations in negotiating with financially troubled debtors. It also discloses information

concerning the frequency with which Ambac opted to take one path as opposed to another in dealing with such 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 position and strategy disclosed in this Exhibit.

17. Exhibit 13 hereto is an excerpt from the Gordon Deposition (34:9 to 37:11). It contains detailed information about Ambac's decision making processes, options, and strategic considerations in negotiating with financially troubled debtors. It also discloses information concerning the frequency with which Ambac opted to take one path as opposed to another in dealing with such 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 position and strategy disclosed in this Exhibit.

18. Exhibit 14 hereto is an excerpt from the Gordon Deposition (61:8-16). It discloses 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.

19. Exhibit 15 hereto is an excerpt from the Gordon Deposition (67:22 to 69:8). It contains detailed information about Ambac's decision making processes, options, and strategic considerations in negotiating with financially troubled debtors. It also discloses information concerning the frequency with which Ambac opted to take one path as opposed to another in dealing with such 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 position and strategy disclosed in this Exhibit.



20. Exhibit 16 hereto is an excerpt from the Gordon Deposition (70:9-13). It contains detailed information about Ambac's decision making processes, options, and strategic considerations in negotiating with financially troubled debtors. It also discloses information concerning the frequency with which Ambac opted to take one path as opposed to another in dealing with such 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 position and strategy disclosed in this Exhibit.

21. Exhibit 17 hereto is an excerpt from the Gordon Deposition (70:22 to 71:3). It discloses information concerning the frequency with which Ambac opted to take one path as opposed to another in dealing with such 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 position and strategy disclosed in this Exhibit.

22. Exhibit 18 hereto is an excerpt from the Gordon Deposition (72:24 to 73:18). It contains detailed information about Ambac's decision making processes, options, and strategic considerations in negotiating with financially troubled debtors. It also discloses information concerning the frequency with which Ambac opted to take one path as opposed to another in dealing with such 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 position and strategy disclosed in this Exhibit.

23. Exhibit 19 hereto is an excerpt from the Gordon Deposition (76:11-19). It reveals details of internal criteria Ambac employs for evaluating, raising concerns about, and deciding to investigate financially troubled debtors. 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, to negotiate with and uncover useful information about troubled debtors, if debtors were aware in advance of this type of information. Ambac's competitive edge would also be eroded if Ambac's competitors 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.

24. Exhibit 20 hereto is an excerpt from the Gordon Deposition (79:1-22). It contains 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 position and strategy disclosed in this Exhibit.

25. Exhibit 21 hereto is an excerpt from the Gordon Deposition (112:12 to 116:19). It contains detailed information about Ambac's decision making processes, options, and strategic considerations in negotiating with financially troubled debtors, and also specific details about Ambac's negotiations 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 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 position and strategy disclosed in this Exhibit.

26. Exhibit 22 hereto is an excerpt from the Gordon Deposition (118:12 to 119:12). It contains 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 position and strategy disclosed in this Exhibit.

27. Exhibit 23 hereto is an excerpt from the Gordon Deposition (121:17-23). It contains 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 position and strategy disclosed in this Exhibit.

28. Exhibit 24 hereto is an excerpt from the Gordon Deposition (135:4-25). It contains detailed information about Ambac's decision making processes, options, and strategic considerations in negotiating with financially troubled debtors, and also specific details about Ambac's negotiations 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 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 position and strategy disclosed in this Exhibit.

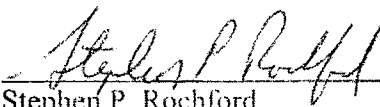
29. Exhibit 25 hereto is an excerpt from the Gordon Deposition (147:24 to 148:9). It discloses details about Ambac's approach to measuring a debtor's operating performance. Ambac keeps this kind of information about its business in strict confidence because it would be seriously harmful to Ambac's ability 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.

30. Exhibit 26 hereto is an excerpt from the Gordon Deposition (149:21 to 150:6). It reveals details of internal criteria Ambac employs for evaluating, raising concerns about, and deciding to investigate financially troubled debtors. 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, to negotiate with and uncover useful information about troubled debtors, if debtors were aware in advance of this type of information. Ambac's competitive edge would also be eroded if Ambac's competitors 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.

31. Exhibit 27 hereto is a copy of the Letter from Ambac's counsel, Paolo Morante, to Complaint Counsel, Jeanne H. Liu (March 25, 2011) and Email from Paolo Morante to ProMedica's counsel, Christine G. Devlin (March 25, 2011).

I declare under penalty of perjury that the foregoing is true and correct. Executed on May 5, 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**



**EXHIBIT [8] -- Redacted**



**EXHIBIT [9] -- Redacted**





**EXHIBIT [10] -- Redacted**



**EXHIBIT [11] -- Redacted**



**EXHIBIT [12] -- Redacted**



**EXHIBIT [13] -- Redacted**





**EXHIBIT [14] -- Redacted**



**EXHIBIT [15] -- Redacted**



**EXHIBIT [16] -- Redacted**



**EXHIBIT [17] -- Redacted**





**EXHIBIT [18] -- Redacted**



**EXHIBIT [19] -- Redacted**



**EXHIBIT [20] -- Redacted**



**EXHIBIT [21] -- Redacted**





**EXHIBIT [22] -- Redacted**



**EXHIBIT [23] -- Redacted**



**EXHIBIT [24] -- Redacted**



**EXHIBIT [25] -- Redacted**





**EXHIBIT [26] -- Redacted**





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T 212.335.4813  
F 212.884.8713

March 25, 2011  
BY HAND

Jeanne H. Liu  
Attorney  
Federal Trade Commission  
Bureau of Competition  
Mergers IV Division  
Federal Trade Commission  
600 Pennsylvania Avenue, NW  
Washington, D.C. 20580

DATE STAMP AND RETURN  
MAR 25 2011 *Jeanne H. Liu*

Re: **In the Matter of ProMedica Health System, Inc. (Docket No. 9346)**  
**Subpoena Duces Tecum Issued to Ambac Financial Group, Inc.**

Dear Ms. Liu:

On behalf of Ambac Assurance Corporation ("Ambac"), we enclose documents Bates-stamped AMB00001-AMB03622, which are responsive to the above-referenced subpoena. Please note that, while the subpoena is addressed to Ambac's parent corporation, Ambac Financial Group, Inc., Ambac is the entity that was involved in the matters relevant to the subpoena and is thus the proper entity to respond to the subpoena.

Please also note that the enclosed materials contain highly confidential business information of Ambac and are being produced subject to the understanding that you and the Federal Trade Commission will protect that confidentiality under applicable law. For the same reason, the documents are also designated "Confidential" under the operative Protective Order Governing Discovery Material issued in this matter by Chief Administrative Law Judge D. Michael Chappell on January 6, 2011, as amended, and the Stipulated Interim Protective Order, as amended, issued by U.S. District Judge David A. Katz on January 10, 2011 in parallel proceedings pending in the U.S. District Court for the Northern District of Ohio, *Federal Trade Comm'n, et al. v. ProMedica Health System, Inc.*, Case No. 3:11-cv-00047-DAK.

Very truly yours,

DLA Piper LLP (US)

Paolo Morante  
Partner

Cc: Kajetan Rozga (w/o encls.)

**From:** Morante, Paolo  
**Sent:** Friday, March 25, 2011 3:36 PM  
**To:** Djencic, Senad; Devlin, Christine Garrett  
**Cc:** Kernisan, Serge; van Panhuys, Vincent  
**Subject:** RE: AMBAC documents

Senad,

As we discussed, please reach out to Serge Kernisan at McDermott Will & Emery (copied here), to arrange for a copy of Ambac's subpoena production to be uploaded to a secure ftp site set up by McDermott Will & Emery for this purpose.

Christine,

As we discussed earlier today, the documents to be uploaded in this fashion represent the response of Ambac Assurance Corporation to the subpoena, as amended, issued by the Federal Trade Commission on February 28, 2011, in the Matter of ProMedica Health System, Inc. (Docket No. 9346). These documents also represent Ambac's response to the subpoena issued by your firm on behalf of ProMedica. Please also note that the enclosed materials contain highly confidential business information of Ambac and are being produced subject to the understanding that you and ProMedica will protect that confidentiality under applicable law. For the same reason, the documents are also designated "Confidential" under the operative Protective Order Governing Discovery Material issued in this matter by Chief Administrative Law Judge D. Michael Chappell on January 6, 2011, as amended, and the Stipulated Interim Protective Order, as amended, issued by U.S. District Judge David A. Katz on January 10, 2011 in parallel proceedings pending in the U.S. District Court for the Northern District of Ohio, *Federal Trade Comm'n, et al. v. ProMedica Health System, Inc.*, Case No. 3:11-cv-00047-DAK.

Regards,



Paolo Morante  
Partner

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[www.dlapiper.com](http://www.dlapiper.com) | [MyBio](#)

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**From:** Devlin, Christine Garrett [<mailto:Cdevlin@mwe.com>]  
**Sent:** Friday, March 25, 2011 3:20 PM  
**To:** Morante, Paolo  
**Cc:** Kernisan, Serge; van Panhuys, Vincent  
**Subject:** AMBAC documents

Mr. Morante,

Thank you again for your call and your willingness to upload AMBAC documents to an ftp site. I have cc'ed Serge Kernisan who is IT on our end and can work with your IT to access the documents. I am also cc'ing Vincent van Panhuys who will be at the deposition on Monday.

Thank you again,

Christine Garrett Devlin  
McDermott Will & Emery LLP  
600 13th Street, N.W. | Washington, DC 20005-3096  
Telephone: 202.756.8667 | Facsimile: 202.478.2768  
[cdevlin@mwe.com](mailto:cdevlin@mwe.com)

\*\*\*\*\*  
IRS Circular 230 Disclosure: To comply with requirements imposed by the IRS, we inform you that any U.S. federal tax advice contained herein (including any attachments), unless specifically stated otherwise, is not intended or written to be used, and cannot be used, for the purposes of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter herein.

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\*\*\*\*\*  
Please visit <http://www.mwe.com/> for more information about our Firm.

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that both public and non-public versions of the foregoing Motion of Non-Party Ambac Assurance Corporation for *In Camera* Treatment of Proposed Evidence, Declaration of Stephen P. Rochford in support thereof, with Exhibits 1 through 27, and Proposed Order, were served on the following on May 5, 2011:

**Via Hand Delivery (2 copies):**

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

**Via Federal Express:**

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

Christine Garrett Devlin  
McDermott Will & Emery LLP  
600 13th Street, N.W.  
Washington, DC 20005-3096  
Tel.: (202) 756-8667

  
Trinetta A. Bolden