

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

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<b>In re</b>	:	<b>Chapter 11</b>
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<b>AMBAC FINANCIAL GROUP, INC.,</b>	:	<b>Case No. 10-15973 (SCC)</b>
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<b>Debtor.</b>	:	<b>Jointly Administered</b>
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<b>AMBAC FINANCIAL GROUP, INC.,</b>	:	
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<b>Movant,</b>	:	
	:	
<b>-against-</b>	:	
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	:	
<b>UNITED STATES DEPARTMENT OF</b>	:	
<b>THE TREASURY - INTERNAL</b>	:	
<b>REVENUE SERVICE,</b>	:	
	:	
<b>Respondent.</b>	:	
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**ORDER (1) DETERMINING THAT CLAIM NUMBERS 3694 AND 3699 FILED BY DEPARTMENT OF THE TREASURY – INTERNAL REVENUE SERVICE SHALL BE ESTIMATED PURSUANT TO BANKRUPTCY CODE SECTION 502(C), AND (2) SETTING PROCEDURES, AND HEARING DATE, FOR ESTIMATION OF THE IRS CLAIMS INCLUSIVE OF DETERMINATIONS PURSUANT TO BANKRUPTCY CODE SECTION 505(A) OF THE DEBTOR'S LIABILITY FOR TAXES OWED AS A RESULT OF LOSSES INCURRED ON ITS POST-2004 CONTRACTS**

Upon consideration of the *Debtor's Motion for Order (1) Determining that Claim Numbers 3694 and 3699 Filed by Department of the Treasury – Internal Revenue*

*Service Shall be Estimated Pursuant to Bankruptcy Code Section 502(c) and (2) Setting Procedures, and Hearing Date, For Estimation of the IRS Claims, Inclusive of Determinations Pursuant to Bankruptcy Code Section 505(a) of the Debtor's Liability for Taxes Owed as a Result of Losses Incurred on its Post-2004 Contracts* (the "Motion"), dated October 12, 2011,<sup>1</sup> filed by Ambac Financial Group, Inc. ("AFG" or the "Debtor"), as debtor in possession, seeking entry of an order (i) determining that claim numbers 3694 and 3699 filed by the Department of the Treasury – Internal Revenue Service shall be estimated, inclusive of determinations of Unresolved Tax Issues, (ii) establishing procedures to estimate claims 3694 and 3699 Filed by the Department of the Treasury – Internal Revenue Service (the "IRS" or "Claimant") and to determine Unresolved Tax Issues, and (iii) fixing notice procedures; and it appearing that the Court has jurisdiction to consider the Motion; and it appearing that the relief requested in the Motion is in the best interest of the Debtor, its estate and creditors; and it appearing that due notice of the Motion has been given and no further notice need be given; and the Court having found that the entire record of this case supports the use of the Court's authority under Bankruptcy Code sections 502(c) and 505(a) to prevent undue delay to the administration of the case; and upon the representations made by counsel at the hearing; and upon good and sufficient cause appearing;

IT IS HEREBY ORDERED THAT the estimation of the IRS Claims and adjudication of the Unresolved Tax Issues shall be conducted in accordance with the following procedures:

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<sup>1</sup> Capitalized terms used but not defined in this Order shall have the meanings ascribed to them in the Motion.

**A. Discovery.**

The Parties shall complete discovery in accordance with the *Order Pursuant to Bankruptcy Code section 105(a) Implementing a Schedule for Completion of Discovery*, dated March 3, 2011 as may be amended by agreement of the parties (the "Discovery Order"), *provided however*, that discovery for purposes of estimation of the IRS Claims shall be completed on or before November 2, 2011, regardless of any agreement of the parties to establish an alternative date, and provided further that the Court will allow appropriate additional discovery in connection with the Unresolved Tax Issues.

**B. Pre-Hearing Briefing.**

1. Debtor's Statement: On or before November 9, 2011, the Debtor may prepare and file with the Bankruptcy Court an objection for the purposes of estimation (the "Estimation Objection") to the IRS Claims, which shall state with particularity, pursuant to Fed. R. Bankr. P. 9013, the legal and factual bases for the Debtor's objection to the IRS Claims and for determining the Unresolved Tax Issues.

The Debtor's Statement shall provide, at a minimum, the following information, if applicable: (i) a declaration providing the specific legal and factual grounds and evidence on which the Debtor requests to fix and to liquidate the IRS Claims pursuant to Bankruptcy Code section 502(c); (ii) all issues of law and fact that are related and necessary to estimate the IRS Claims and that are to be determined pursuant to Bankruptcy Code section 505(a), (iii) any and all evidence to support the legal and factual assertions made in the Debtor's Statement; and (vi) a list of witnesses to be presented, together with annexed written declarations of the direct testimony of each such witness.

The Debtor's Statement shall not exceed thirty (30) pages in length, exclusive of affidavits, declarations or statements and documentary and statutory exhibits.

2. Service of Debtor's Statement. On or before November 9, 2011, the Debtor shall serve the United States (the "U.S.", the "IRS" or the "Claimant") in accordance with the procedures set forth below, with (i) a notice of the Debtor's Statement (the "Estimation Notice"), and (ii) a copy of Debtor's Statement. Service shall be effectuated (a) in accordance with Bankruptcy Rules 2002, 7004 and 9014, and Federal Rule of Civil Procedure 4, and shall be made to (i) attorneys for the Committee, (ii) attorneys for OCI, (iii) the U.S. Trustee, (iv) the civil process clerk at the office of the United States Attorney for the Southern District of New York, (v) the Attorney General of the United States, and (vi) the District Director of the IRS, and (vii) all entities which have filed a written request for notice pursuant to Rules 9014 and 2002 of the Federal Rules of Bankruptcy Procedure.

3. Claimant's Statement. On or before November 9, 2011, the Claimant may prepare the Claimant's Statement, for the purposes of estimation of the IRS Claims, which shall state with particularity, pursuant to Fed. R. Bankr. P. 9013, the legal and factual bases for the IRS Claims.

The Claimant's Statement shall provide, at a minimum, the following information, if applicable (i) a declaration for purposes of estimation pursuant to Bankruptcy Code section 502(c), providing the specific legal and factual grounds and evidence on which the Claimant bases the IRS Claims and which Claimant asserts to be relevant to determination of the Unresolved Tax Issues; (ii) all issues of law and fact that

are related and necessary to estimate the IRS Claims and that are to be determined pursuant to Bankruptcy Code section 505(a), (iii) any and all evidence to support the legal and factual assertions made in the Claimant's Statement, and (vi) a list of witnesses to be presented, together with annexed written declarations of the direct testimony of each such witness.

The Claimant's Statement shall not exceed thirty (30) pages in length, exclusive of affidavits, declarations or statements and documentary and statutory exhibits. The Claimant's timely filed proof of claim form and all of the documents attached thereto shall remain part of the record for estimation purposes and should not be included in or attached to the Claimant's Statement.

4. Service of Claimant's Statement, Default, and Discharge. The Claimant shall serve the Claimant's Statement upon the Debtor and the attorneys representing the Debtor in this case, and on (i) attorneys for the Committee, (ii) attorneys for OCI, (iii) the U.S. Trustee, and (vi) all entities which have filed a written request for notice pursuant to Rules 9014 and 2002 of the Federal Rules of Bankruptcy Procedure, in accordance with Bankruptcy Rules 2002 and 7004, and Federal Rule of Civil Procedure 4. If Claimant fails to file a timely a completed and executed Claimant's Statement so as to be received on or before November 9, 2011, the IRS Claims shall be deemed forever discharged, disallowed, waived and expunged against the Debtor and the Debtor's chapter 11 estate, and the Bankruptcy Court shall enter an appropriate order in connection therewith and in connection with relief sought under Bankruptcy Code section 505(a).

5. Parties' Rebuttals. The Debtor and Claimant may, in their discretion, on or before five (5) business days following the service of the Debtor's

Statement or Claimant's Statement, as the case may be, respond by completing, executing, and serving upon the other party, with a copy to all parties required to be served copies of the Debtor's Statement and Claimant's Statement, a rebuttal outlining the additional arguments and defenses with respect to estimation of the IRS Claim pursuant to Bankruptcy Code section 502(c) and the determinations requested under Bankruptcy Code section 505(a) as to the Unresolved Tax Issues, and the elements and evidence set forth in the Debtor's Statement or the Claimant's Statement, as the case may be. The rebuttals shall not exceed ten (10) pages in length, exclusive of affidavits, declarations or statements and documentary and statutory exhibits. As to each witness referred to in a Parties' rebuttal and not listed, or who will offer testimony in addition to that described, in the Debtor's Statement or Claimant's Statement, as the case may be, there shall be annexed to the rebuttal a written declaration of the witness's direct testimony.

**C. Claims Resolution and Tax Issue Determination Process.**

Initial and Mandatory Disclosures. Unless otherwise ordered by the Court, the information required to be provided in the Debtor's Statement and Claimant's Statement shall be deemed to satisfy any initial or mandatory disclosure required by Fed. R. Civ. P. 26, as applicable pursuant to Fed. R. Bankr. P. 9014.

**D. Additional Submissions to the Court.**

1. Estimation or Adjudication by Court. Unless the IRS Claims are settled, the Parties shall, as set forth above, compile and file with the Bankruptcy Court the IRS Claims, the Debtor's Statement, the Claimant's Statements, and the rebuttals (if any) (collectively, the "Claim File") for purposes of a hearing on estimation of the Claim pursuant to the Debtor's Statement.

2. Pre-hearing Order. Each of the Parties shall, no later than five (5) days prior to the Hearing Date, file a Pre-hearing Statement setting forth: 1) A summary of legal issues to be resolved, 2) A statement of disputed facts; 3) A list of witnesses to be presented; with a description of the subject of each witnesses' anticipated testimony, *provided that* to the extent that facts obtained through discovery refute, contradict or impeach material facts asserted by either party in their respective declarations or certified statements, either party shall include in the Pre-hearing Statement a written summary of such disputed facts, not to exceed five (5) pages, providing specific citations to such facts (including any transcripts) ("Discovered Evidence"). In the event a party submits Discovered Evidence, the non-submitting party shall have the right to dispute the admissibility or asserted interpretation of Discovered Evidence (including by submitting a summary of contrary evidence obtained through discovery) in a written statement not to exceed five (5) pages, including the specific disputes and reasons therefor (which statement shall also be deemed to be "Discovered Evidence" for purposes of these Procedures), no later than two (2) days prior to the Estimation Hearing.

**E. Hearing.**

1. Hearing. Unless otherwise ordered by the Bankruptcy Court, an Estimation Hearing shall be held on November 21, 2011.

2. Oral Argument. Subject to the Bankruptcy Court's discretion to increase or decrease the hearing time, each party shall have thirty (30) minutes to explain its position to the Bankruptcy Court.

3. Examination of Witnesses: During the Estimation Hearing and as necessary to provide evidence as to disputed facts, the parties shall examine such witnesses as are included in the Parties' Pre-hearing Statements, and each party shall be entitled to cross-examine witnesses. The court shall establish and may expand or contract the time for examination and cross-examination of witnesses, as deemed in its discretion to be necessary or appropriate.

4. Evidentiary and Legal Record. The evidentiary and legal record shall be confined to the Debtor's Statement, the Claimant's Statement, the rebuttals, the Pre-hearing Statements and related submissions, witness testimony presented at the Estimation Hearing and any Discovered Evidence; provided, however, that the Bankruptcy Court may allow or require additions to the record when deemed in its discretion to be necessary or appropriate.

5. Resolution. Upon the Bankruptcy Court's review of the submissions described in the preceding paragraph and oral argument at the Estimation Hearing, the Bankruptcy Court shall estimate the IRS Claims for all purposes under the Bankruptcy Code, and shall determine the Unresolved Tax Issues pursuant to Bankruptcy Code section 505(a), provided that no party's right to reconsideration under section 502(j) shall be impaired.

**F. Settlement Stipulations.** If the Debtor and Claimant agree to a compromise and settlement of the IRS Claims, or any portion thereof, and, in connection therewith, the Claimant is to be granted an allowed claim, the Debtor shall seek Bankruptcy Court approval of such compromise and settlement and corresponding



stipulation and order (the "Settlement Stipulation") in accordance with the terms and conditions of the Case Management Order on ten (10) days' notice. If no objections to the Settlement Stipulation are timely filed, the Debtor shall submit an order approving the Settlement Stipulation without further notice or hearing. If an objection is timely interposed, the matter will be scheduled for hearing at the next omnibus hearing date; provided, however, that, under no circumstances shall a Settlement Stipulation provide for payment other than in accordance with a confirmed plan in the Debtor's chapter 11 cases. If the Bankruptcy Court does not approve the Settlement Stipulation, the Debtor, at their discretion, may elect to negotiate further with Claimant or may deem settlement negotiations terminated and seek to estimate the IRS Claims pursuant to this Order.

Dated: \_\_\_\_\_, 2011  
New York, New York

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THE HONORABLE SHELLEY C. CHAPMAN  
UNITED STATES BANKRUPTCY JUDGE