

COURT OF APPEALS OF WISCONSIN
DISTRICT IV

In the Matter of the Rehabilitation of:
Segregated Account of Ambac Assurance Corporation:

THEODORE K. NICKEL¹ and the OFFICE OF THE
COMMISSIONER OF INSURANCE,

Plaintiffs-Respondents, et al.,

v.

WELLS FARGO BANK/Trustee of
Bondholders,

Appeal Nos. 2010AP1291,
2010AP2022, 2010AP2835,
2011AP0300, and all other
appeals from Dane County Circuit
Court Case No. 2010-CV-1576
filed since March 1, 2011,
which have yet to be assigned
case numbers

Defendants-Appellants, et al.

Dane County Circuit Court Case No. 2010-CV-1576
The Honorable William D. Johnston,
Lafayette County Circuit Court, Presiding by Judicial Assignment

**MOTION TO CONSOLIDATE APPEALS AND MODIFY BRIEFING
REQUIREMENTS**

¹ On January 3, 2011, Theodore K. Nickel was appointed Wisconsin Commissioner of Insurance, replacing former Commissioner Sean A. Dilweg, who initiated this rehabilitation proceeding. By operation of law, Commissioner Nickel succeeded former Commissioner Dilweg as Rehabilitator of the Segregated Account of Ambac Assurance Corporation, WIS. STAT. § 645.32(1), and as the respondent in these appeals, WIS. STAT. § 803.10(4)(a) (substitution of public officers), WIS. STAT. § 809.84 (rules of civil procedure applicable to appeals).

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Commissioner of Insurance and Theodore
Nickel, Commissioner of Insurance of the State
of Wisconsin, as Court-Appointed
Rehabilitator of the Segregated Account of
Ambac Assurance Corporation*

Respondents Theodore Nickel and Office of Commissioner of Insurance (collectively, the “Commissioner”) and Ambac Assurance Corporation (“Ambac”), jointly move this Court pursuant to WIS. STAT. §§ 809.10(3), 809.14(1) and 809.82(2) for an order consolidating Appeal Nos. 2010AP1291, 2010AP2022, 2010AP2835, 2011AP0300, and the 15 new appeals filed in this insurer rehabilitation proceeding between March 1 and 10, 2011, for coordinated briefing and joint consideration and disposition by a single panel of this Court. If granted, this joint motion will eliminate duplication of effort, promote judicial efficiency, and avoid the risk of inconsistent decisions by different panels of this Court on the related factual and legal issues presented in these nineteen appeals.

I. BACKGROUND

All of the above-referenced appeals arise out of the largest insurer rehabilitation proceeding in Wisconsin history. The ongoing proceeding is pending in Dane County Circuit Court, Hon. William Johnston, presiding (the “Rehabilitation Court”), and relates to the rehabilitation of the Segregated Account (the “Segregated Account”) of Ambac.²

² The Segregated Account was created in accordance with WIS. STAT. § 611.24(2) and is being rehabilitated under WIS. STAT. § 645.31, *et seq.*

The appeals involve the following 15 Appellants or appellant groups, most of which are hedge funds or large financial institutions, and seven of which are Appellants in at least two of the appeals:

- (1) the “RMBS Funds”³;
- (2) certain funds holding Las Vegas Monorail bonds (the “LVM Bondholders”),⁴ including Eaton Vance Management and certain of its affiliates (“Eaton Vance”);
- (3) Access to Loans for Learning Student Loan Corporation and Lloyds TSB Bank plc (“ALL/Lloyds”);
- (4) Depfa Bank plc (“Depfa”);
- (5) the Federal Home Loan Mortgage Corporation (“Freddie Mac”);
- (6) Wells Fargo Bank, as trustee for the LVM bond policy (“Wells Fargo LVM”);
- (7) Wells Fargo Bank, N.A., as trustee of certain RMBS trusts and as indenture trustee of certain student loan-backed securities transactions (“Wells Fargo RMBS”);
- (8) One State Street, LLC (“One State”);

³ The RMBS Funds consist of six hedge funds claiming interests in residential mortgage-backed securities: Aurelius Capital Management, LP; Fir Tree, Inc.; King Street Capital, L.P.; King Street Capital Master Fund, Ltd.; Monarch Alternative Capital LP; and Stonehill Capital Management LLC.

⁴ The LVM Bondholders consist of four funds claiming interests in LVM bonds: Eaton Vance Management; Nuveen Asset Management; Restoration Capital Management LLC; and Stone Lion Capital Partners L.P.

- (9) the United States Internal Revenue Service (“IRS”);
- (10) the Customer Asset Protection Company (“CAPCO”);
- (11) Bank of America, N.A., as the trustee of certain RMBS trusts (“BofA”);
- (12) Wilmington Trust Company and Wilmington Trust FSB, as trustees of securities of certain unnamed trusts (collectively, “Wilmington”);
- (13) the Federal National Mortgage Association (“Fannie Mae”);
- (14) U.S. Bank N.A., as trustee of certain securitization trusts (“U.S. Bank”); and
- (15) Deutsche Bank National Trust Company and Deutsche Bank Trust Company Americas, as trustees of certain securitization trusts (collectively, “Deutsche Bank”).

All of the appeals challenge orders issued by the Rehabilitation Court, and the Commissioner and Ambac are the only Respondents in all of the appeals.

The issues raised in those appeals fall into eight categories:

- Challenges to the Establishment of the Segregated Account (“Establishment Challenges”). These involve challenges to the structure of the rehabilitation, which were addressed by the Rehabilitation Court in orders filed May 27, 2010, October 26, 2010, and January 24, 2011.
- Challenges to the Allocation of Specific Parts of Ambac’s Business to the Segregated Account (“Allocation Challenges”). These involve legal challenges about the Commissioner’s criteria for allocating parts of Ambac’s business to the Segregated Account and/or his

application of that criteria to a specific policy, contract, or liability. These challenges were addressed by the Rehabilitation Court in orders filed May 27, 2010, July 16, 2010, October 26, 2010, and January 24, 2011.

- Challenges to the Scope and Substance of Injunction Orders Issued By the Rehabilitation Court Under WIS. STAT. § 645.05 to Protect Claims-Paying Resources and Facilitate the Orderly Management of the Rehabilitation (“Injunction Challenges”). These include challenges against one or more provisions of the Rehabilitation Court’s March 24, 2010 “first-day” injunction and/or its November 8, 2010 “supplemental” injunction, either on their face or as applied to specific parties-in-interest. These challenges were addressed by the Rehabilitation Court’s orders of October 26, 2010 and January 24, 2011.
- Challenges to the Trial Court’s Refusal to Enjoin the Settlement Between Ambac and a Number of Financial Institutions Holding Ambac-Insured Credit Default Swaps (“Bank Settlement Challenges”). These involve challenges arising out of the Rehabilitation Court’s May 27, 2010 refusal to enjoin a settlement reached between Ambac and 14 large financial institutions, which eliminated more than \$12 billion in potential claims against the claims-paying resources of the Segregated Account in exchange for a capped payment of \$2.6 billion in cash and \$2 billion in surplus notes.
- Challenges Relating to the Denial of Formal Intervention (“Intervention Challenges”). These include challenges to the Rehabilitation Court’s denial of motions to formally intervene as parties to the rehabilitation, despite the Rehabilitation Court’s holding that all parties-in-interest that demonstrate the legal capacity to appear on behalf of that interest have an ongoing right to participate, be heard, and appeal in the proceeding without intervention and party status. These challenges were addressed by the Rehabilitation Court’s orders of May 27, 2010, July 16, 2010, October 26, 2010, and January 24, 2011.
- Challenges to Adequacy of Disclosures Regarding the Plan and the Rehabilitation, the Denial of Formal Discovery Requests of the Commissioner and/or Ambac, the Scheduling of Hearings, Evidentiary Rulings, and Other Case-Management Rulings (“Procedural Challenges”). These involve challenges relating to the Rehabilitation Court’s findings that it had sufficient information

from the Commissioner to rule upon certain motions and requests, the Rehabilitation Court's consideration of such information as evidence, the Rehabilitation Court's denial of leave to permit third-parties to pursue formal discovery of the Commissioner and Ambac, the Rehabilitation Court's finding that an expedient schedule for hearings was appropriate, the Rehabilitation Court's management of examination and cross-examination of witnesses, and related discretionary case-management rulings. At their core, all of these issues are challenges to the Rehabilitation Court's view of the comprehensive, management-oriented rehabilitation proceedings as being necessarily different and distinct from traditional, adversarial civil litigation.

- Challenges to the Rehabilitation Court's Competency and/or Jurisdiction to Issue Certain Rulings ("Jurisdictional Challenges"). These involve challenges relating to the Rehabilitation Court's authority or jurisdiction to issue certain orders, including the injunction orders and/or its January 24, 2011 order confirming the Plan of Rehabilitation.
- Challenges to the Plan of Rehabilitation for the Segregated Account ("Plan Challenges"). These involve substantive challenges to the Rehabilitation Court's January 24, 2011 approval of the Commissioner's Plan of Rehabilitation for the Segregated Account, including assertions that the Plan, as a whole or in specific provisions, is contrary to state or federal law. Because of the comprehensive nature of the confirmation process and the final order of confirmation, these challenges subsume for the most part all of the prior interim order challenges.

For this Court's convenience, the following chart briefly describes the nineteen pending appeals by listing the Appellants and the general issues raised in each appeal based on the docketing statements on file. This chart does not list the two appeals that were dismissed in this matter: Appeal No. 2010AP2164, which this Court dismissed *sua sponte* on October 5, 2010; and Appeal No. 2010AP2721, for which leave to appeal was denied on November 12, 2010.

THE NINETEEN PENDING APPEALS

1. RMBS Funds', LVM Bondholders' (including Eaton Vance) and Freddie Mac's first appeal, No. 2010AP1291, consolidated with 2010AP2022 (on hold)

RMBS Funds	Establishment Challenges Injunction Challenges Bank Settlement Challenges Intervention Challenges Procedural Challenges
LVM Bondholders, including Eaton Vance	Bank Settlement Challenges Intervention Challenges Procedural Challenges
Freddie Mac	Bank Settlement Challenges Intervention Challenges Procedural Challenges

2. LVM Bondholders' (including Eaton Vance) second appeal, and Wells Fargo LVM's first appeal, No. 2010AP2022, consolidated with 2010AP1291 (on hold)

LVM Bondholders, including Eaton Vance	Allocation Challenges Intervention Challenges Procedural Challenges
Wells Fargo LVM	Allocation Challenges Intervention Challenges Procedural Challenges

3. ALL/Lloyds' & Depfa's first appeal, No. 2010AP2835 (on hold)

ALL/Lloyds	Establishment Challenges Injunction Challenges Intervention Challenges Procedural Challenges
Depfa	Establishment Challenges Injunction Challenges Intervention Challenges Procedural Challenges

4. One State's first appeal, No. 2011AP0300 (filed Jan. 24, 2011)

One State	Allocation Challenges Injunction Challenges Intervention Challenges
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5. RMBS Funds' second appeal (filed March 10, 2011)

RMBS Funds	Establishment Challenges Jurisdictional Challenges Plan Challenges
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6. Eaton Vance's third appeal (filed March 10, 2011)

Eaton Vance	Establishment Challenges Injunction Challenges Allocation Challenges Intervention Challenges Procedural Challenges Plan Challenges
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7. All/Lloyds' second appeal (filed March 1, 2011)

ALL/Lloyds	Establishment Challenges Injunction Challenges Intervention Challenges Procedural Challenges Plan Challenges
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8. Depfa's second appeal (filed March 1, 2011)

Depfa	Establishment Challenges Injunction Challenges Intervention Challenges Procedural Challenges Plan Challenges
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9. Freddie Mac's second appeal (filed March 9, 2011)

Freddie Mac	Establishment Challenges Jurisdictional Challenges Plan Challenges
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10. Wells Fargo LVM's second appeal (filed March 8, 2011)

Wells Fargo LVM	Establishment Challenges Injunction Challenges Allocation Challenges Intervention Challenges Procedural Challenges Plan Challenges
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11. Wells Fargo RMBS's appeal (filed March 10, 2011)

Wells Fargo RMBS	Injunction Challenges Plan Challenges
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12. One State's second appeal (filed March 10, 2011)

One State	Allocation Challenges Injunction Challenges Intervention Challenges Procedural Challenges Plan Challenges
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13. IRS's appeal (filed March 8, 2011)⁵

IRS	Allocation Challenges Injunction Challenges Jurisdictional Challenges Plan Challenges
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⁵ The IRS presently has two appeals arising out of the rehabilitation proceeding pending in the United States Court of Appeals for the Seventh Circuit. The first federal appeal, *Nickel v. United States*, Case No. 11-1158 (7th Cir.), seeks review of the district court's order remanding the entire rehabilitation proceeding to the Rehabilitation Court, following the IRS's removal of the proceeding to federal court in December 2010.

The second federal appeal, *United States v. Wisconsin State Circuit Court*, Case No. 11-1419 (7th Cir.), seeks review of the district court's order dismissing for lack of subject matter jurisdiction the IRS's action to enjoin the Rehabilitation Court from exercising jurisdiction over the IRS's challenges to the injunction orders, and to enjoin the Commissioner and the Rehabilitation Court from enforcing the injunction orders against the IRS.

entered into with the LVM Bondholders other than Eaton Vance and One State.⁶

II. CONSOLIDATION OF THE NINETEEN APPEALS AND COORDINATED BRIEFING AND DISPOSITION BY A SINGLE PANEL WOULD ADVANCE JUDICIAL EFFICIENCY, AVOID THE RISK OF INCONSISTENT RULINGS AND PREJUDICE NO ONE

As evidenced above, there is a substantial identity of parties across the appeals. All of the appeals arise from the same continuing rehabilitation proceeding in the Rehabilitation Court, all involve the same Respondents, and a number of the Appellants have filed more than one appeal (in which many of the same issues are raised and re-raised).

There also is a substantial identity of issues across the appeals. The docketing statements of all of the appeals include challenges to some mix of the eight categories identified above, and almost all Appellants reserved the right to argue issues from other categories not identified in their docketing statements.

Perhaps most importantly, the resolution of any of these overlapping issues as to one appellant necessarily impacts other Appellants and non-appealing claimants. In essence, each appeal challenges the Commissioner's determination that the structure and methods of

⁶ The hearing for approval on the One State settlement is set for March 24, 2011 and the hearing on the LVM Bondholders settlement is scheduled for April 21, 2011.

rehabilitation employed here were lawful and better serve the interests of all policyholders and other claimants in this proceeding than other alternatives, without unlawfully prejudicing any particular claimant. Because this proceeding seeks the orderly and equitable preservation and distribution of limited, possibly inadequate claims-paying resources to thousands of potential claimants, any relief granted to one particular appellant as to those challenges necessarily impacts all other Appellants and would-be claimants.

In view of such similarities and the generally applicable impact of any court ruling on these issues, this Court previously consolidated the two earliest appeals (Nos. 2010AP1291 and 2010AP2022) for joint briefing and disposition. (*See Ex. A.*) Like the earlier, consolidated appeals, the later-filed appeals, at their core, raise the same or overlapping factual and legal questions. Indeed, two of the Appellants (Depfa and ALL/Lloyds) wrote this Court to urge consolidation of all pending appeals arising out of the rehabilitation proceedings. (*See Exs. B, C* (letters from counsel for Depfa and ALL/Lloyds advising that they favored consolidation of their later-filed appeals with the earlier, previously consolidated appeals).) Further, the docketing statements of virtually all of the recent Appellants note that their appeals “involve[] the same facts and the same or related issue[s]” as the prior appeals from the rehabilitation proceeding.

Finally, consolidation will result in greater efficiency and consistency of adjudication, because it will enable the same panel to hear all challenges with reference to the same, now-complete record. In November 2010, the Rehabilitation Court held five days of evidentiary hearings and one full day of oral argument about confirmation of the Plan of Rehabilitation, receiving testimony from all of the primary affiants in prior motions before that court on all conceivable aspects of the rehabilitation. As this Court implicitly recognized in its February 18, 2011 order staying the three 2010 appeals pending confirmation of the Plan of Rehabilitation, and as it expressly held in its order denying leave to appeal in Appeal No. 2010AP2721, “the issues will be fully preserved, and their factual context better developed, following the hearing” on confirmation of the Plan. (Ex. D, at 4.)

For the same reasons, having one panel with the same, full confirmation record decide appeals from the same proceeding raising overlapping (and often identical) issues promotes efficiency far better than asking any number of panels to answer the same questions based on the record as it existed at different interim pre-confirmation stages of the proceedings. Moreover, it ensures consistent rulings, a consideration that carries increased importance in proceedings affecting thousands of policyholders and other potential claimants of the Segregated Account.

III. RESPONDENTS' PROPOSAL REGARDING CONSOLIDATION AND COORDINATED BRIEFING

In order to promote efficiency for all involved, the Respondents request the entry of an order that provides for the consolidation and briefing outlined below. For this Court's convenience, a proposed form of order is attached.

A. Consolidation of all nineteen appeals

Respondents propose that all appeals arising out of the rehabilitation proceeding—*i.e.*, Appeal Nos. 2010AP1291, 2010AP2022, 2010AP2835, 2011AP0300, and the 15 new appeals filed since March 1, 2011 (which have yet to be assigned case numbers)—should be consolidated and assigned to a single panel for joint and coordinated disposition.

The reason for consolidation is that there is significant overlap between the issues raised in the various appeals. For example, the previously consolidated Appeal Nos. 2010AP1291 and 2010AP2022 raise challenges to the creation of, or allocation of specific policies or claims to, the Segregated Account, the denial of intervention, and the denial of the Appellants' request to permit them to conduct discovery of the Commissioner and Ambac.⁷ Because numerous other Appellants in later

⁷ These appeals also include a challenge to the Rehabilitation Court's denial of Appellants' request to enjoin the consummation of a settlement between Ambac and a group of financial institutions whose policies were not allocated to
(continued on following page)

appeals raise the same exact issues, and because those same issues were subject to the extensive factual development that occurred at the November 2010 evidentiary hearings and by subsequent orders of the Rehabilitation Court, it makes sense to address the substantially identical issues in a coordinated fashion based on the full record.

B. Coordinated briefing of appeals

1. Appeal Nos. 2010AP1291 and 2010AP2022

With respect to the previously consolidated appeals (Nos. 2010AP1291 and 2010AP2022), although briefing is complete, the issues raised in those appeals were subsequently addressed again in the Rehabilitation Court at the November 2010 five-day evidentiary hearing on Plan confirmation and in its January 24, 2011 order regarding Plan confirmation. Therefore, the Appellants and Respondents to those appeals should be granted leave to each file a supplemental brief of up to 1,500 words, which would address the additional factual and legal development regarding the issues raised in those appeals that occurred during the Plan

the Segregated Account, but the settlement was fully consummated after both the trial court and this Court denied the Appellants' requests to block it. The commutation payments were made in June 2010. Thus, the Appellants in Appeal Nos. 2010AP1291 and 2010AP2022 are subject to no prejudice in having their appeals consolidated with later appeals that raise common challenges related to the Segregated Account, and decided in a coordinated fashion. The Appellants in the earlier appeals are also appealing the recent confirmation order, which addresses many of the same facts and issues on a more developed record.

confirmation process.⁸ Respondents propose that these short supplemental briefs be filed simultaneously by both sides on the same date that Respondents' main response briefs are due for the new appeals.

Permitting Appellants and Respondents to file a short supplemental brief would ensure that the challenges to the establishment of the Segregated Account (or the allocation of specific policies or liabilities to that Account) would be decided on the same full record in all of the appeals, and in a coordinated fashion with other appeals raising the same issues.

2. All Other Appeals

With respect to Appeal Nos. 2010AP2835, 2011AP300 and the 15 other recently filed appeals that have yet to be briefed, it is not clear whether, and the extent to which, the Appellants in these appeals will coordinate their efforts and file one or more joint briefs on an issue-specific

⁸ In addition, supplemental briefing would permit counsel for Eaton Vance, one of the LVM Bondholder appellants in both 2010AP1291 and 2010AP2022, to file a brief independent of the other LVM Bondholders. During the course of briefing those appeals, the LVM Bondholders were represented by Kramer Levin Naftalis & Frankel LLP. Since that time, all of the LVM Bondholders *except* Eaton Vance reached a settlement agreement with the Commissioner, and that settlement is awaiting approval of the Rehabilitation Court. (See www.ambacpolicyholders.com at "Court Filings" link, filings dated Feb. 10, 2011.) If the Rehabilitation Court grants approval to proceed with the settlement agreement, and certain other conditions described in those settlement papers are satisfied, the settling LVM Bondholders will be dismissed as described in the settlement papers. Approval of the settlement may also affect the position on appeal of their trustee, Wells Fargo LVM. A supplemental brief would permit the new counsel for Eaton Vance to be heard on those appeals.

or alternate basis. *See* WIS. STAT. § 809.19(5) (each appellant may file a separate brief or a joint brief with one or more other Appellants, provided that a joint brief should not exceed the page allowance for a single appellant).

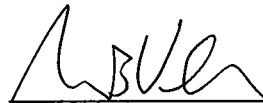
As a result, it is difficult for Respondents to make a concrete proposal regarding briefing until they see the number and length of the opening briefs filed by the Appellants in the aggregate. Once the Respondents have had an opportunity to review the Appellants' briefs and assess the number of pages necessary to adequately address all arguments, Respondents will file a motion proposing an efficient approach for the Respondents' briefs. Respondents shall file that motion within six business days of receiving Appellants' opening briefs.

Given the number of appeals and the fact that this proposal contemplates that the Respondents will file a motion regarding the form and length of their response briefs, Respondents further propose that they be allowed sixty days in which to file their response briefs, pursuant to WIS. STAT. § 809.82(2), and that Appellants be allowed thirty days in which to file their reply briefs in accordance with WIS. STAT. §§ 809.82(2) and 809.19(8)(c)2.

Counsel is authorized to file this Motion on behalf of both
Respondents.

Dated this 15th day of March, 2011.

FOLEY & LARDNER LLP



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Exhibit A



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DISTRICT IV

October 8, 2010

To:

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You are hereby notified that the Court has entered the following order:

2010AP1291	Sean Dilweg v. Wells Fargo Bank (L.C. # 2010CV1576)
2010AP2022	Sean Dilweg v. Wells Fargo Bank (L.C. # 2010CV1576)

Before Higginbotham, J.

Respondents Sean Dilweg, Office of Commissioner of Insurance, and Ambac Assurance Corp. jointly move to consolidate Case No. 2010AP1291 with Case No. 2010AP2022, and to modify the briefing schedule. They note that the appeals arise from the same underlying proceeding, involve overlapping parties, and will raise substantially similar or related issues. Appellants Eaton Vance Management, Nuveen Asset Management, Restoration Capital management LLC and Stone Lion Capital Partners L.P (collectively, the LVM Bondholders) join the motion to consolidate the appeals with respect to briefing and disposition, but ask that the cases remain separate for the purpose of any oral argument that this court might subsequently

order. The appellants also request a slightly different briefing schedule, which they represent has now been agreed to by all of the parties.

We agree that consolidation and a modified briefing schedule are appropriate. We will not address the structure of any oral argument unless and until we determine that oral argument is required for one or both cases. Therefore,

IT IS ORDERED that Case No. 2010AP1291 is hereby consolidated with Case No. 2010AP2022 for briefing and disposition. This order does not address the structure of any oral argument.

IT IS FURTHER ORDERED that Respondents OCI and Ambac may each file one brief up to 16,000 words jointly addressing all of the Appellants' briefs. The Respondents' briefs shall be due 30 days after the last Appellant's brief has been filed in Case No. 2010AP2022.

IT IS FURTHER ORDERED that the LVM Bondholders may choose whether to file one joint reply brief, or a reply brief for each appeal, with a total maximum word count of 4,800 regardless whether one or two briefs are filed. The reply brief(s) shall be due 30 days after the last respondent's brief has been filed.

A. John Voelker
Acting Clerk of Court of Appeals

Exhibit B



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March 1, 2011

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Re: *In the Matter of the Rehabilitation of the Segregated Account of Ambac Assurance Corporation*
Appeal Nos. 2010AP1291, 2010AP2022, 2010AP2835 and 2011AP300.

Dear Mr. Voelker:

We represent Depfa Bank plc (“Depfa”), the appellant in Appeal Number 2010AP2835. The purpose of this letter is to comment briefly on the letters filed with the Court of Appeals on February 22, 2010, by counsel for the Office of the Insurance Commissioner (“OCI”) and counsel for the group of appellants known as the “RMBS Policyholders.” We understand that that the RMBS Policyholders oppose the continuation of the stay ordered by the Court of Appeals on February 18, 2011, and may seek to vacate that stay at some point in the near future.

Depfa concurs in OCI’s request that the Court of Appeals continue the stay of the above appeals to allow for consolidation with the forthcoming appeals that will be filed in response to the Circuit Court’s January 24, 2011, *Decision and Final Order Confirming the Rehabilitator’s Plan of Rehabilitation, with Findings of Fact and Conclusions of Law* (“Rehabilitation Plan Order”). As noted by OCI, Depfa intends to appeal the Rehabilitation Plan Order forthwith. Depfa’s appeal will raise a significant number of factual and legal issues, including the core question regarding the legality of the simultaneous creation and seizure of the Ambac Segregated Account. This fundamental question arises in all of the prior appeals, including the prior appeal filed by the RMBS Policyholders. While Depfa respects and appreciates the ongoing efforts of the RMBS Policyholders to ensure that Ambac’s policyholders, including Depfa, are treated in a manner consistent with Wisconsin law and the U.S. Constitution, Depfa continues to believe that the Court of Appeals should only reach and resolve that issue and any related issues based on review of the entire record developed in the Circuit Court prior to the filing of the Rehabilitation Plan Order.¹

¹ Of course, if the Court of Appeals believes that the RMBS Policyholders’ prior appeal (Appeal No. 2010AP1291) can be resolved without reaching prematurely the legality of the simultaneous creation and seizure of the Ambac Segregated Account and the propriety of OCI’s actions taken in relation thereto, Depfa certainly does not oppose such action.



ORRICK

A. John Voelker
Acting Clerk
March 1, 2011
Page 2

As the Court of Appeals has indicated, the continuation of the stay and the subsequent consolidation of forthcoming appeals to the pending appeals will serve the interests of justice and efficiency, and will safeguard against inconsistent appellate results on questions that are of critical import to Depfa, to all of Ambac's policyholders, and indeed to policyholders of any Wisconsin-domiciled insurance company. Not only does the resolution of the legal issues presented by this closely watched case have broad policy and financial implications for Ambac and its policyholders, but it has the clear potential to impact the future regulation of the insurance industry and the administration of insurer insolvencies nationwide. Depfa greatly appreciates the care that the Court of Appeals is taking to ensure the proper administration and resolution of these appeals.

Very truly yours,

Thomas J. Welsh

Of Counsel for Depfa Bank plc
Admitted pro hac vice

Gregory W. Lyons
O'Neil, Cannon, Hollman, DeJong & Laing S.C.
Counsel for Depfa Bank plc

cc: Counsel of Record (via email).

Exhibit C

March 2, 2011

HAND DELIVERY

John A. Volcker, Clerk
Wisconsin Court of Appeals
110 East Main Street, Suite 215
P.O. Box 1688
Madison, WI 53701-1688

Re: *In the Matter of the Rehabilitation of Segregated Account
of Ambac Assurance Corp.*, App. Nos. 2010AP1291, 2010AP2022, 2010AP2835,
2011AP300, 2011AP _____
Dane County Circuit Court, Case No. 10-CV-1576

Dear Mr. Volcker:

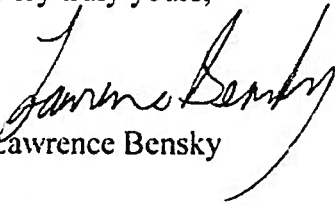
I am one of the lawyers for Lloyds TSB Bank plc (“Lloyds”) and Access to Loans for Learning Student Loan Corporation (“ALL Student Loan”), appellants in Appeal No. 2010AP2825 and in an appeal we filed yesterday. Both appeals, as well as Appeal Nos. 2010AP1291, 2010AP2022, and 2011AP300 arise from *In the Matter of the Rehabilitation of the Segregated Account of Ambac Assurance Corporation*, Dane County Circuit Court, Case No. 10 CV 1576 (the “Rehabilitation Proceedings”). Lloyds and ALL Student Loan wish to join with Depfa Bank plc (“Depfa”) in the assertions made in the letter to you of their counsel, Thomas J. Welsh, dated March 1, 2011, with respect to the continued stay of all appeals in the above matters.

Like Depfa, Lloyds and ALL Student Loan believe that the lawfulness of the Segregated Account should only be decided upon a full and complete review of the entire record of the Rehabilitation Proceedings, which can only occur after the record from the confirmation hearing has been filed with this Court and the remaining appeals by the parties to that hearing have been filed. This should not cause a significant delay considering the very significant issues at stake.

Thank you for your consideration of these matters.

March 2, 2011
Page 2

Very truly yours,


Lawrence Bensky

Enc.

cc: Circuit Court Email Service List

Exhibit D



OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS

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MADISON, WISCONSIN 53701-1688

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DISTRICT IV

November 12, 2010

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You are hereby notified that the Court has entered the following opinion and order:

2010AP2721-LV

Sean Dilweg v. Access to Loans for Learning Student Loan
Corporation (L.C. #2010CV1576)

Before Vergeront, P.J., Lundsten and Blanchard, JJ.

Access to Loans for Learning Student Loan Corp. and Lloyds TBS Bank PLC (collectively, Lloyds) petition for leave to appeal: (1) a scheduling order, dated October 20, 2010, that denied their requests for discovery and set a date for a confirmation hearing on the rehabilitation plan in this matter; and (2) any nonfinal aspects of an order dated October 26, 2010, that ruled on a legal challenge to the establishment of the segregated account which is the subject of the rehabilitation proceeding, denied various requests for injunctive relief, and refused to allow several interested parties to intervene.¹ Lloyds also asks us to stay the scheduled hearing. The Wisconsin Office of the Commissioner of Insurance and the Ambac Assurance Company oppose the petition and stay request.

Interlocutory review is disfavored in this state. *State ex rel. A.E. v. Circuit Court for Green Lake County*, 94 Wis. 2d 98, 102, 288 N.W.2d 125 (1980). While we have discretion to review an order not appealable as of right when an appeal would materially advance the termination of the litigation or clarify further proceedings, protect the petitioner from substantial or irreparable injury, or clarify an issue of general importance in the administration of justice, we will not grant leave to appeal absent compelling circumstances. See WIS. STAT. § 808.03(2) (2007-08). *Cascade Mountain, Inc. v. Capitol Indem. Corp.*, 212 Wis. 2d 265, 268, 569 N.W.2d 45 (Ct. App. 1997). This policy “is designed to protect pretrial and trial court proceedings from the interruptions and delays caused by multiple appeals, and to limit each case to a single appeal” under ordinary circumstances. *Id.* The petitioner must demonstrate both that there is a substantial likelihood of success on appeal, and that the necessity of immediate review

¹ We do not decide here whether the order may be final and appealable as to those parties who were denied the right to intervene. That decision will be made in response to any notices of appeal which are filed.

outweighs our general policy against the piecemeal disposition of litigation. *Id.* at 268 n.2; *State v. Salmon*, 163 Wis. 2d 369, 374-75, 471 N.W.2d 286 (Ct. App. 1991).

Lloyds complains that it is inefficient and fundamentally unfair that the matter has been scheduled for trial without first permitting discovery, and it asserts that no hearing would even be necessary if this court were to agree with its position that the segregated account which is the subject of the proceeding was improperly created. The commissioner and Ambac respond that rehabilitation proceedings under Chapter 645 are not designed as an adversarial process and the trial court therefore properly refused to grant individual discovery rights to every policy holder and/or insurer that had some interest in the outcome. They also point out that Lloyds failed to direct its request for a stay to the trial court first.

Having considered the arguments of both the petitioner and the respondent, we conclude that there are no sufficiently compelling reasons to warrant interlocutory review here. The issues presented will be fully preserved, and their factual context better developed, following the hearing.

IT IS ORDERED that the petition for leave to appeal and motion for a stay are denied.

A. John Voelker
Acting Clerk of Court of Appeals