
In the Matter of the Rehabilitation of:

Case No. 10 CV 1576

Segregated Account of Ambac Assurance Corporation

**NOTICE OF MOTION AND THE ASSURED REINSURERS' MOTION FOR
LEAVE TO FILE A SUPPLEMENTAL BRIEF**

To: Office of the Commissioner of Insurance
Commissioner Theodore K. Nickel
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All Counsel of Record

PLEASE TAKE NOTICE that Assured Guaranty Re Ltd. and Assured Guaranty Corp. (the "Assured Reinsurers"), by their attorneys Quarles & Brady LLP, move the Court for permission to file a supplemental brief and two supporting affidavits in response to the reply briefs filed on May 16, 2011 by the Wisconsin Commissioner of Insurance, Theodore K. Nickel, as court-appointed rehabilitator (the "Rehabilitator") of the Segregated Account of Ambac Assurance Corporation ("Ambac"), and by Ambac. The Assured Reinsurers will present this motion before the Honorable William D.

Johnston, presiding by judicial appointment, at the LaFayette County Courthouse, 626 Main Street, Darlington, Wisconsin, at the currently-scheduled hearing at 9:00 a.m. (CDT) on May 25, 2011, or at an alternative date, time, and place to be set by the Court.

The grounds for this motion are as follows:

1. The Rehabilitator filed its opening brief on April 15. *See* Rehabilitator's Br. in Supp. of Mot. to Enforce Inj. Against Assured Guaranty Corp. and Assured Guaranty Re Ltd. ("Rehab. Opening Br."). Ambac did not submit an opening brief.

2. The Assured Reinsurers filed a response brief on May 9. *See* Br. of Assured Guaranty Re Ltd. and Assured Guaranty Corp. in Opp'n to Rehabilitator's Mot. to Enforce Inj. ("Assured Reinsurers' Resp.").

3. The Rehabilitator and Ambac each filed reply briefs on May 16. *See* Rehabilitator's Reply in Supp. of Mot. to Enforce Inj. Against Assured Guaranty Corp. and Assured Guaranty Re Ltd. ("Rehab. Reply"); Ambac Assurance Corporation's Reply Br. in Supp. of the Commissioner's Mot. to Enforce the Inj. Order Against Assured ("Ambac Reply").

4. The Rehabilitator and Ambac's reply briefs raised a number of new arguments that were not raised in the Rehabilitator's opening brief, including the three arguments noted below.

5. First, the Rehabilitator's reply includes a new argument in support of the position that this Court has personal jurisdiction over AG Re. The Rehabilitator's opening brief did not address the issue of personal jurisdiction at all. This issue was first raised by the Assured Reinsurers in their response brief, where the Assured Reinsurers

argued that the Court lacks personal jurisdiction over AG Re because the Rehabilitator failed to effectuate service of process on AG Re, among other reasons. *See* Assured Reinsurers' Resp. at 13-18. The Rehabilitator now argues in its reply (a) that it repaired any defect in service by serving AG Re with a summons after receiving the Assured Reinsurers' response brief and (b) that the Rehabilitator was not required to serve AG Re. *See* Rehab. Reply at 19-21.

6. Second, Ambac argues in its reply that Assured Guaranty's payment in March 2011 of the cash portion of its quota share of the cash paid in a commutation agreement bears on the meaning of "the Company" under the Surplus Share Agreement. *See* Ambac Reply at 4-6. Although this cash payment took place before the Rehabilitator filed its motion against the Assured Reinsurers on April 15, the Rehabilitator did not address the payment when arguing the meaning of "the Company" in its opening brief. *See* Rehab. Opening Br. at 14-17.

7. Third, Ambac also argues in its reply brief that the motion procedure initiated by the Rehabilitator provides the Assured Reinsurers with the "day in Court" to which they are due. *See* Ambac Reply at 16. The Rehabilitator's opening brief did not address whether these motion procedures represent an adequate process for disposing of the adversarial litigation between Ambac and the Assured Reinsurers.

8. Because these three arguments were raised for the first time on reply, the Assured Reinsurers had no opportunity to address them in their response brief.

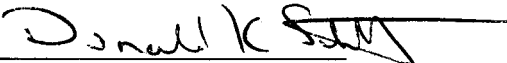
9. At the same time they file this motion, the Assured Reinsurers are filing a short supplemental brief as well as two supporting affidavits. *See* Supplemental Br. of

Assured Guaranty Re Ltd. and Assured Guaranty Corp. in Opp'n to Rehabilitator's Mot. to Enforce Inj.; Affidavit of William Duffy; Affidavit of Philip R. Kastellec. The supplemental brief and supporting affidavits address only the three arguments newly raised in the Rehabilitator and Ambac's replies. The brief is seven pages long, well within the ten-page limit on reply briefs under Dane County Local Rule 115.

WHEREFORE the Assured Reinsurers respectfully request an order permitting them to file a supplemental brief and two supporting affidavits in response to the reply briefs filed on May 16, 2011 by the Wisconsin Commissioner of Insurance, Theodore K. Nickel, as court-appointed rehabilitator (the "Rehabilitator") of the Segregated Account of Ambac Assurance Corporation ("Ambac"), and by Ambac.

Dated this 20th day of May, 2011

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Note: Assured Guaranty Re Ltd. appears without
waiving its right to object to personal
jurisdiction.