

In the Matter of the Rehabilitation of:

Case No. 10 CV 1576

Segregated Account of Ambac Assurance Corporation

**SUPPLEMENTAL AFFIDAVIT OF JAMES M. MICHENER**

UNITED KINGDOM (BERMUDA)	)
	: ss.:
HAMILTON	)

JAMES M. MICHENER, being duly sworn, deposes and says:

1. I submit this supplemental affidavit in response to the supplemental brief in support of the motion by the Wisconsin Commissioner of Insurance, Theodore K. Nickel, as court-appointed rehabilitator (the "Rehabilitator") of the Segregated Account (the "Segregated Account") of Ambac Assurance Company ("Ambac") to have the Court enjoin Assured Guaranty Re Ltd. ("AG Re") and Assured Guaranty Corp. ("Assured Guaranty") from pursuing arbitration of disputes with Ambac. Assured Guaranty and AG Re, together, are referred to as the "Assured Reinsurers." Except where otherwise stated, I have personal knowledge of the facts set forth in this affidavit.

2. I submitted an affidavit, sworn to on May 4, 2011 (the "Michener Affidavit") in opposition to the Rehabilitator's motion. The Michener Affidavit is incorporated by reference.

3. The facts set forth in the Michener Affidavit – including those in paragraph 16, where I stated that the Assured Reinsurers decided not to file objections to the Order for Temporary Injunctive Relief (the “Injunction”) of March 24, 2010 or the plan of rehabilitation for the Segregated Account (the “Plan”) in reliance on the statements by counsel for the Rehabilitator, Kevin G. Fitzgerald (“Fitzgerald”) of Foley & Lardner LLP (“Foley”) in June 2010 and November 2010 – were and are true and accurate.

4. In the Michener Affidavit, I did not discuss certain written and oral communications between counsel for the Assured Reinsurers, Debevoise & Plimpton LLP (“Debevoise”) and Quarles & Brady LLP (“Quarles”), and Foley on June 21 and June 22, 2010. These communications are referred to in the Rehabilitator’s supplemental brief, and I will describe them in this affidavit. These communications related to the effect of the Injunction on the Assured Reinsurers’ rights under the Facultative Reinsurance Agreement between AG Re and Ambac, dated as of November 24, 2004 (the “Facultative Agreement”), and under the Second Amended and Restated Surplus Share Reinsurance Agreement between Assured Guaranty and Ambac, dated as of April 1, 2003 (the “Surplus Share Agreement”) (together, the “Reinsurance Agreements”), and other reinsurance agreements pursuant to which Assured Guaranty had ceded reinsurance to Ambac (the “Ambac Reinsurance Contracts”).

5. After June 15, 2010, the date on which Debevoise received an email from Mr. Fitzgerald stating the Rehabilitator’s position that “the temporary injunction does not apply to enjoin any actions that Assured Guaranty or its affiliates may take under the

reinsurance agreements,” the Assured Reinsurers still had concerns about the terms of the Injunction, for two reasons. First, the Ambac Reinsurance Contracts had been allocated to the Segregated Account and therefore were subject to the Injunction. Second, while we did not believe that the Injunction applied to the Reinsurance Agreements, and our belief had been confirmed by Mr. Fitzgerald, we were concerned that the Reinsurance Agreements might later be allocated to the Segregated Account and therefore become subject to the Injunction. We did not know how those allocation decisions had been made or might be made in the future.

6. Because of these continuing concerns, after June 15, 2010, Debevoise prepared, on behalf of the Assured Reinsurers, objections to the Injunction for filing in compliance with the June 22 deadline set forth in the Injunction. On or about June 15, 2010, the Assured Reinsurers retained Quarles to represent them in connection with their rights and obligations under the Reinsurance Agreements. I understood that on June 22, 2010 Debevoise and Quarles would discuss with Foley the objections that would be filed unless some resolution were reached.

7. In May and June 2010, Assured Guaranty negotiated, and then reached an agreement on, a commutation of Ambac’s insurance of a film securitization facility for The Weinstein Company LLC. On June 11, 2011, the Rehabilitator filed a motion seeking this Court’s approval of that commutation, and a hearing on that motion was scheduled for June 23, 2011. Akin Gump Strauss Hauer & Feld LLP represented Assured Guaranty in the Weinstein matter. We did not believe there was any connection between the Weinstein matter and the issues pertaining to the Injunction that Debevoise

and Quarles were working on, and before June 22, 2010 we did not discuss the Weinstein matter with them.

8. On June 22, 2010, I received a phone call from Wolcott Dunham of Debevoise. Mr. Dunham told me that Foley had just advised Debevoise and Quarles that if the Assured Reinsurers filed objections to the Injunction, the Rehabilitator would cancel the hearing on the Weinstein commutation that was scheduled for the next day and would not seek this Court's approval of the commutation. We did not see why there should be any connection between the Assured Reinsurers' objections to the Injunction and a decision by the Rehabilitator not to proceed with a transaction that he had determined, and had told the Court, was in the best interests of Ambac policyholders and the Segregated Account.

9. Following my discussion with Mr. Dunham about the Weinstein commutation, we considered and consulted with Debevoise and Quarles whether to file objections to the Injunction on that day. Among the topics we discussed were Mr. Fitzgerald's June 15, 2010 email and the willingness of the Rehabilitator to extend the time for making certain objections to the Injunction insofar as they related to the Ambac Reinsurance Contracts.

10. On June 22, 2010, after consideration of these matters and discussions with Debevoise and with Quarles, the Assured Reinsurers decided not to file objections to the Injunction before the deadline on that day.

11. In making this decision, the Assured Reinsurers relied on two factors. First, with respect to the Reinsurance Agreements, the Assured Reinsurers relied on the

June 15, 2010 email from Mr. Fitzgerald. The Assured Reinsurers believed that the June 15, 2010 email represented the Rehabilitator's position and that this position would not change. Second, with respect to the Ambac Reinsurance Contracts, which were in the Segregated Account, the Assured Reinsurers relied on an agreement between the Rehabilitator and Assured Guaranty, entered into on June 22, extending to September 3, 2010 the time for Assured Guaranty and its affiliates to object, with respect to those contracts, to the set-off provision in the Injunction.

  
JAMES M. MICHENER

Sworn to before me this

6<sup>th</sup> day of June, 2011.

  
Notary Public

