

June 8, 2011

ATTORNEYS AT LAW

VEREX PLAZA
150 EAST GILMAN STREET
MADISON, WI 53703-1481
POST OFFICE BOX 1497
MADISON, WI 53701-1497
608.257.5035 TEL
608.258.4258 FAX
foley.comWRITER'S DIRECT LINE
608.258.4206
mvansicklen@foley.com EMAIL

HAND DELIVERED

Jody Baux
Ambac Clerk, Dane County Circuit Court
Dane County Courthouse
215 South Hamilton Street
Madison, Wisconsin 53703

Re: *In the Matter of the Rehabilitation of Segregated Account of Ambac Assurance Corporation*; Dane County Circuit Court Case No. 10 CV 1576

Dear Ms. Baux:

Enclosed for filing in the above-referenced matter are the following documents:

1. Application for Approval of Engagement of Roger A. Peterson, as Full-Time Special Deputy Commissioner of the Segregated Account;
2. Notice of Hearing on Rehabilitator's Application for Approval of Engagement of Roger A. Peterson, as Full-Time Special Deputy Commissioner of the Segregated Account; and
3. Proposed Order Granting the Rehabilitator's Application for Approval of Engagement of Roger A. Peterson, as Full-Time Special Deputy Commissioner of the Segregated Account.

We have served by email all parties-in-interest on the service list and posted copies on the Court-approved website. Thank you for your attention to this matter.

Very truly yours,

FOLEY & LARDNER LLP


Michael B. Van Sicklen

Enclosures

cc: Honorable William D. Johnston (with enclosures, via first-class mail)
All Counsel of Record (with enclosures, via email)

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In the Matter of the Rehabilitation of:

Case No. 10 CV 1576

Segregated Account of Ambac Assurance Corporation

**APPLICATION FOR APPROVAL OF ENGAGEMENT OF
ROGER A. PETERSON, AS FULL-TIME SPECIAL DEPUTY COMMISSIONER OF
THE SEGREGATED ACCOUNT**

The Commissioner of Insurance for the State of Wisconsin, as the court appointed Rehabilitator of the Segregated Account of Ambac Assurance Corporation (the “Segregated Account”), hereby submits the following Application for Approval of Engagement of Roger A. Peterson as full-time Special Deputy Commissioner for the Segregated Account, with his compensation payable as an administrative expense of the Segregated Account. The basis for this Application is as follows:

BACKGROUND

1. Pursuant to Wis. Stat. § 645.33(1), the Commissioner, as the Rehabilitator, is authorized to appoint a Special Deputy Commissioner to rehabilitate the insurer. That subsection, as well as the official commentary to Chapter 645, contemplate that the Special Deputy Commissioner will be someone who is engaged specifically for that role, rather than one who assumes it in conjunction with or in addition to other offices or professional duties. *See* Wis. Stat. § 645.33(1) (discussing the need “to *obtain* a special deputy of proven ability” in the insurance industry, as opposed to merely delegating that responsibility to an OCI employee among other regulatory tasks (emphasis added)). *See also* Wis. Stat. Ann. ch. 645 introductory cmt. (discussing the need to draw from the insurance field a person of “recognized ability” and to

“convince him and his present employer that on the grounds of public service and private career opportunity he must take the job”).

2. To date, the role of Special Deputy Commissioner for the Segregated Account has been staffed by employees at the Office of the Commissioner of Insurance (“OCI”)—first Kimberly A. Shaul, and presently Roger A. Peterson—handling those responsibilities in addition to their senior-level employment responsibilities at OCI.

3. Over the course of this rehabilitation, it has become increasingly evident to the Commissioner and OCI that the role of Special Deputy Commissioner for a rehabilitation proceeding of this magnitude and complexity demands a person working full-time on matters pertaining to the Segregated Account and who can be regularly on-site at the insurer’s offices in New York. The approach of having one person divide his or her time and attention between the responsibilities of the Special Deputy Commissioner for the Segregated Account and fulfilling his or her regular job responsibilities for OCI in Wisconsin generally has created inefficiencies and constraints that disserve both entities, and is not optimum in the long-term.

4. The day-to-day matters handled by the Special Deputy Commissioner demand near-constant availability and hands-on oversight that is impossible for a regulator in Wisconsin to fully provide with other significant responsibilities in regulating numerous other insurers. Moreover, the Segregated Account’s need for constant attention has resulted in frequent travel to and from New York by the Special Deputy Commissioner, which added inefficiency to the arrangement in the past. At the same time, the normal workload for OCI employees on matters unrelated to Ambac has remained steady, if not increased, since the commencement of this rehabilitation.

5. Earlier this year, the new Commissioner concluded that one person at OCI could no longer occupy this dual role, given that each of the positions demanded a full-time commitment.¹ He therefore determined that it was necessary to engage either a company or an individual on an independent contractor-basis to serve full-time in the role of Special Deputy Commissioner for the Segregated Account who would be based on-site in New York with periodic travel to Wisconsin to report to the Commissioner and attend hearings in this Court, as appropriate in the interests of the Segregated Account.

6. In determining who was best-suited to serve in that capacity, the Commissioner was guided by Chapter 645, which emphasizes the need “[t]o obtain the ‘right’ person” with “recognized ability who will regard it both as his public duty and his private opportunity to save the company.” Wis. Stat. Ann. ch. 645 introductory cmt.

7. Mr. Peterson, who is presently serving as Special Deputy Commissioner for the Segregated Account in addition to serving as OCI’s Deputy Administrator of the Division of Regulation and Enforcement, was the clear choice. Mr. Peterson has two decades of experience in the financial examination of insurers generally and Ambac specifically, and also has the proven ability to address the unique and complex challenges posed by this rehabilitation. Moreover, he has proven ability as a Special Deputy Commissioner in this rehabilitation. Indeed, he has been directly involved in assessing and addressing Ambac’s financial situation since its long-term outlook began to deteriorate in late 2007 and early 2008. His testimony at the Plan confirmation hearings displayed his depth of knowledge on a vast scope of Ambac-related

¹ As noted in this Court’s order confirming the Plan of Rehabilitation, Ambac-related issues occupied 80 to 90 percent of the available time of Mr. Peterson in 2010, and that was prior to his role in this proceeding being expanded when he was selected by the new Commissioner to succeed Ms. Shaul as the Special Deputy Commissioner for the Segregated Account.

issues, and his pertinent expertise on these subjects was noted both by policyholders (*see, e.g.*, 11/30/10 Tr. at 165:1-10) and the Court (*see* Jan. 24, 2011 Decision and Order ¶ 22).

8. Although other candidates for the position were considered in the past, the Commissioner deemed for several reasons that hiring a different person than Mr. Peterson for the role of Special Deputy Commissioner was less desirable because:

(a) *First*, as anyone who has participated in this rehabilitation can appreciate, it involves complex and specialized financial instruments, a legal structure that is unique to Wisconsin insurance law, constant context-specific negotiations in different stages, and a host of other variables and moving parts affecting the Segregated Account that must be considered at any given time. To retain a stranger to these proceedings would cause delays and might jeopardize the interests of policyholders and the public for an indeterminate period before such a candidate could have obtained the Ambac-specific expertise already possessed by Mr. Peterson.

(b) *Second*, in addition to the need to “get up to speed” on Ambac and the Segregated Account, a new hire would also need to gain familiarity with OCI, Wisconsin insurance law, and the specific role of the Special Deputy Commissioner under Chapter 645. No such need exists for Mr. Peterson, who has overseen other insurer rehabilitations and has administered Wisconsin insurance law on behalf of OCI for over two decades.

(c) *Third*, a new hire would carry the inevitable risk that the person retained, despite his or her qualifications, would not ultimately “regard it both as his public duty and his private opportunity to save the company.” Wis. Stat. Ann. ch. 645 introductory cmt. That risk does not exist with Mr. Peterson, who has served the public for more than

two decades at OCI and has shown his dedication to the success of this specific endeavor by ably handling leading roles in regard to the rehabilitation.

9. Upon reaching the conclusion that Mr. Peterson was the right person to serve as full-time, on-site Special Deputy Commissioner for the Segregated Account, the Commissioner ascertained Mr. Peterson's interest in the position and engaged outside advisers to ensure that the process of Mr. Peterson's hiring and the substantive terms of any professional engagement contract would comply with all legal, ethical, and professional requirements imposed by Wisconsin laws and regulations.

10. The process of negotiating and reaching an agreement with Mr. Peterson was conducted entirely at arm's length. Mr. Peterson was advised to seek his own counsel to protect his interests in this matter, which he did at his own expense. All proposals and negotiations were conducted through OCI's representatives and Mr. Peterson's outside, independent attorney. Mr. Peterson was not privy to any "inside knowledge" regarding the negotiations. As part of this process, Mr. Peterson was "walled off" from any internal communications at OCI regarding considerations pertaining to his possible retention as a full-time, on-site Special Deputy or possible terms of that employment.

11. For guidance regarding those terms, the Commissioner looked to at least two outside sources. In regard to assessing terms for reasonable compensation, the Commissioner engaged Robert E. Nolan Company (the "Nolan Company"), an outside consultant for the Segregated Account previously approved by this Court to advise the Commissioner on insurance related human resources and other operational aspects of the insurer (Order for Rehabilitation ¶ 7), to prepare a compensation assessment for the position of Special Deputy Commissioner. In regard to the terms of the employment arrangement generally, the Commissioner utilized certain

transactional lawyers at Foley & Lardner LLP who have substantial expertise in regard to executive employment and consulting agreements and who have not otherwise been working on the rehabilitation effort generally.

THE CONSULTING AGREEMENT AND ITS TERMS

12. This process culminated on June 2, 2011, when Mr. Peterson and the Commissioner (in his capacity as Rehabilitator) reached a Consulting Agreement effective upon this Court's approval whereby Mr. Peterson would resign from OCI, move to New York, and devote his full-time professional efforts and time to the performance of the duties of Special Deputy Commissioner for the Segregated Account in accordance with Wis. Stat. Chapter 645. As described in more detail below, the terms of the Consulting Agreement are fair and reasonable, and they comport with the hiring principles espoused in Chapter 645.

Compensation

13. Chapter 645 requires the Commissioner to “make such arrangements for compensation as are necessary to obtain a special deputy commissioner of proven ability[,]” subject to court approval. Wis. Stat. § 645.33(1). The Special Deputy should be “compensated liberally so that he does not lose financially” by accepting the responsibility to “achiev[e] success in a complex undertaking.” Wis. Stat. Ann. ch. 645 introductory cmt.

14. The Nolan Company's independent compensation assessment for the Rehabilitator produced a market rate range for the position of Special Deputy Commissioner, measuring the responsibilities of the position against comparable positions in the market. The Nolan Company concluded that the position was comparable to positions paying \$800,000 to \$1.6 million per year in the market. It further concluded that—for the purpose of hiring a single individual on a contract basis—an initial range of \$400,000 to \$800,000 was advisable,

depending on the experience of that individual in six different areas (regulatory, legal, product, company, operations, and shutdowns).

15. Here, the Consulting Agreement provides that Mr. Peterson will be compensated at a rate of \$50,000 per month (\$600,000 annually), with an opportunity to earn a “stay” bonus of \$375,000 if he remains as Special Deputy Commissioner for at least 40 months and performs to the satisfaction of the Rehabilitator. The Consulting Agreement also provides for a transitional housing allowance of \$7,500 per month for the first three months of his term only, and covers certain capped out-of-pocket expenses associated with moving to New York and reaching and implementing the Consulting Agreement.

16. The compensation terms of the Consulting Agreement were negotiated at arm’s length and are fair to the Segregated Account. Mr. Peterson’s negotiated compensation under the Consulting Agreement is well within (or below) the ranges of reasonableness for the position as determined by the Nolan Company. Based on the Nolan Company’s assessment, it is clear that hiring someone other than Mr. Peterson would likely result in the Segregated Account paying as much or more for an individual with far less relevant experience relating to the duties of this position and a far longer ramp-up period for obtaining Ambac-specific knowledge. As it stands, the Consulting Agreement provides the best of both worlds for the Segregated Account: it retains the optimal person for the role of Special Deputy Commissioner and secures his on-site, full-time efforts in that position while compensating him at or below fair market standards. It also allows the Commissioner to fill Mr. Peterson’s present position at OCI, which is of critical importance to the agency, with a person who will be able to dedicate his or her efforts to it on a full-time basis.

Maintaining Authority and Flexibility of the Commissioner

17. Consistent with Wis. Stat. § 645.33(1), the Commissioner may terminate the Consulting Agreement at any time, albeit with an early termination payment if such termination is made by the Commissioner without cause. The Consulting Agreement also mandates the full dedication of Mr. Peterson to the task of Special Deputy Commissioner: he must follow any lawful direction by the Commissioner, must perform the services of Special Deputy Commissioner in the manner dictated by Chapter 645 and the Commissioner, and may not engage in any other employment or business without the consent of the Commissioner. This includes resigning his present position at OCI and sacrificing any anticipated benefits associated with remaining in that position.

18. The Consulting Agreement also protects the rehabilitation and provides flexibility by accounting for any potential changes in the scope of this delinquency proceeding. Specifically, the Consulting Agreement requires that Mr. Peterson remain as Special Deputy Commissioner under the same terms if the Commissioner were to pursue a broader rehabilitation of Ambac as a whole.

CONCLUSION

19. The Consulting Agreement reached between the Commissioner (in his capacity as Rehabilitator of the Segregated Account) and Mr. Peterson is necessary and beneficial to the administration of this rehabilitation and the implementation of the Plan of Rehabilitation. Mr. Peterson is uniquely qualified to serve as Special Deputy Commissioner and has shown the proven ability and expertise to effectively perform the functions required of that position. The substantive terms of the Consulting Agreement are objectively reasonable, and the procedures used to reach agreement upon those terms was fair.

For the foregoing reasons, the Commissioner requests this Court to approve the Application. A proposed order is attached.

Dated this 8th day of June, 2011.

FOLEY & LARDNER LLP

By:


Michael B. Van Sicklen, SBN 1017827

Matthew R. Lynch, SBN 1066370

*Attorneys for Commissioner of Insurance of the
State of Wisconsin, as Rehabilitator of the
Segregated Account of Ambac Assurance
Corporation*

Mailing Address:

Foley & Lardner LLP
150 East Gilman Street
Post Office Box 1497
Madison, Wisconsin 53701
Telephone: (608) 257-5035
Facsimile: (608) 258-4258

Kevin G. Fitzgerald
Andrew A. Oberdeck
Foley & Lardner LLP
777 East Wisconsin Avenue
Milwaukee, Wisconsin 53202
Telephone: (414) 271-2400
Facsimile: (414) 297-4900

In the Matter of the Rehabilitation of:

Case No. 10 CV 1576

Segregated Account of Ambac Assurance Corporation

**NOTICE REGARDING APPLICATION FOR APPROVAL OF ENGAGEMENT OF
ROGER A. PETERSON, AS FULL-TIME SPECIAL DEPUTY COMMISSIONER OF
THE SEGREGATED ACCOUNT**

TO: All Interested Parties

PLEASE TAKE NOTICE that the Commissioner of Insurance for the State of Wisconsin, as the court appointed Rehabilitator of the Segregated Account of Ambac Assurance Corporation (the "Segregated Account"), has filed the accompanying application for approval of the engagement of Roger A. Peterson as full-time Special Deputy of the Segregated Account of Ambac Assurance Corporation.

PLEASE TAKE FURTHER NOTICE that any objections to approval of the Commissioner's application should be filed and served by no later than the close of business on Monday, June 20, 2011. Any such objection should specify the basis for the objection. If any such objections are filed, the Commissioner reserves the right to request a hearing regarding the application. If no objections are timely filed and served, the Commissioner will request the Court to enter the proposed order approving the application.

The application and other documents pertaining to it have all been posted on the court-approved website for this proceeding, <http://ambacpolicyholders.com>. Consistent with Paragraph 2 of the Court's March 24, 2010 Order Regarding Form of Notice, the website serves as the official, court-approved means for effecting notice of all filings, orders, notices and hearings. Any policyholders and counterparties who lack regular access to either the Internet or

a computer printer may receive a mailed hard copy of the motion or any other document posted on the website by mailing a request for "hard copy" service to:

Heidi Ernst
Foley & Lardner LLP
P.O. Box 1497
Madison, WI 53701-1497

Dated this 8th day of June, 2011.

FOLEY & LARDNER LLP

By: 

Michael B. Van Sicklen, SBN 1017827
Matthew R. Lynch, SBN 1066370

150 East Gilman Street
Post Office Box 1497
Madison, Wisconsin 53701
Telephone: (608) 257-5035
Facsimile: (608) 258-4258

*Attorneys for Commissioner of Insurance of the
State of Wisconsin, as Rehabilitator of the
Segregated Account of Ambac Assurance
Corporation*

In the Matter of the Rehabilitation of:

Case No. 10 CV 1576

Segregated Account of Ambac Assurance Corporation

**ORDER GRANTING THE REHABILITATOR'S APPLICATION FOR APPROVAL OF
ENGAGEMENT OF ROGER A. PETERSON, AS FULL-TIME SPECIAL DEPUTY
COMMISSIONER OF THE SEGREGATED ACCOUNT**

This matter came before this Court on the Application of the Wisconsin Commissioner of Insurance, as the court appointed Rehabilitator for the Segregated Account of Ambac Assurance Corporation, for Approval of Engagement of Roger A. Peterson, as full-time Special Deputy Commissioner of the Segregated Account. In accordance with Wis. Stat. § 645.33 and the Order for Rehabilitation dated March 24, 2010, and for other good cause,

IT IS HEREBY ORDERED that the Application for Approval of Engagement of Roger A. Peterson, as full-time Special Deputy Commissioner of the Segregated Account, is approved.

Dated: _____, 2011

BY THE COURT

Honorable William D. Johnston
Lafayette County Circuit Court Judge
Presiding by Judicial Appointment