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3 In the Matter of the MOTION HEARING -  
4 Rehabilitation of: TRANSCRIPT OF COURT'S  
5 SEGREGATED ACCOUNT OF AMBAC DECISION  
6 ASSURANCE CORPORATION  
7  
8 Case No. 10-CV-1576

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6 **COPY**  
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7 HONORABLE WILLIAM D. JOHNSTON  
8 CIRCUIT COURT JUDGE PRESIDING  
9

10 PLACE: Lafayette County Courthouse  
11 626 Main Street  
12 Darlington, WI 53530

13 TIME: 1:30 p.m.

14 DATE: July 8, 2011

15 A P P E A R A N C E S

16 MICHAEL B. VAN SICKLEN and MATTHEW R. LYNCH, Attorneys  
17 at Law, FOLEY & LARDNER LLP, 150 East Gilman Street,  
18 Madison, Wisconsin 53701-1497, appeared on behalf of  
19 Petitioner, Commissioner of Insurance of the State of  
20 Wisconsin, and the Department of Insurance of the State of  
21 Wisconsin.

22 DANIEL W. STOLPER, Attorney at Law, STAFFORDROSENBAUM  
23 LLP, 222 West Washington Avenue, Suite 900, Madison,  
24 Wisconsin 53701-1784, appeared on behalf of Ambac Assurance  
25 Corporation.

26 RANDALL GOLD, Attorney at Law, FOX & FOX S.C., 124 West  
27 Broadway, Monona, Wisconsin 53716, appeared with and on  
28 behalf of Roger A. Peterson.

29 BRYAN K. NOWICKI, Attorney at Law, REINHART BOERNER VAN  
30 DEUREN s.c., 22 East Mifflin Street, Suite 600, Madison,  
31 Wisconsin 53703, and MICHAEL T. BRODY, Attorney at Law,  
32 JENNER & BLOCK LLP, 353 North Clark Street, Chicago,  
33 Illinois 60654-3456, appeared on behalf of RMBS  
34 Policyholders.

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I N D E X

Argument by:

Page

Court's ruling

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P R O C E E D I N G S

THE COURT: All right. On this matter, we have to go back and look at not only what the role of the office of the -- or the Commissioner of Insurance is, but also what the role of the court is in these rehabilitating procedures, and that was defined and discussed at length in many of the earlier hearings in this matter. The court has as its role the -- it's kind of a superintending position, but it is not a micromanaging position.

The court is not to put itself into a position where it looks over the shoulder of the office of Commissioner of Insurance or the Special Deputy Liquidator or Rehabilitator in this case to second guess their particular decisions. What happens basically and generally is that the Commissioner of Insurance steps in as the manager of this particular company and is charged to go forward in a manner that is a proper exercise of those duties as the manager of the company, and the court then is to look and see whether, in doing so, it abuses its discretion within the purview of the statute and the reach of the statutes.

In looking at this particular matter and the fact that I also had received a -- and I get these in liquidations quite frequently where the Liquidator or Rehabilitator is acquiring the services of a professional.

1 It may be an accountant or some quite frequently esoteric  
2 kind of expertise in tax areas or transactional areas or  
3 security areas and they are making a recommendation for  
4 hiring a person and I review those and routinely, after the  
5 review and I'm satisfied that the Rehabilitator or  
6 Liquidator has made an appropriate case for those services,  
7 approve those.

8                   These are very complex proceedings beyond  
9 what most of us are familiar with. It's very seldom that I  
10 see a situation where I actually watch the person who is  
11 being promoted or recommended for the position, that I get  
12 to see him do a job interview, and I saw Mr. Peterson for  
13 over two days in this court on that witness stand as to all  
14 phases of this proceeding up to that point, and this was on  
15 the plan that was being proposed, but we had hearings.

16                   We've had enormously complex and technical  
17 affidavits that he's submitted throughout this process,  
18 which I have reviewed, and I -- as I said, I had the  
19 opportunity to watch this job interview of Mr. Peterson and  
20 it was clear to me that he was the one who understood this  
21 proceeding. He understood the scope of what was being --  
22 the approach that was being used here to deal with this  
23 enormous, complex set of problems that Ambac presented with  
24 and he was the one who had tremendous background.

25                   This is all documented in the papers and I

1 won't restate it, but he's had -- with the national office  
2 of commissioners of insurance he's held offices, he's  
3 held -- chaired important positions. He analyzed the  
4 positions of security holders through very in-depth and  
5 thorough questioning by I think I described as some of the  
6 best questioners and questionings that I've seen in a  
7 courtroom in any proceeding.

8           So I was able to come away from that with an  
9 evaluation of the ability of Mr. Peterson, especially in  
10 this position. I had thought early on, and I did not raise  
11 it, but I had a lingering thought as to how one person could  
12 perform all of these duties when I looked at the enormity of  
13 this task, the Rehabilitator, and looked at the other tasks  
14 that Mr. Peterson was performing within the department.

15           And, of course, we had -- during this whole  
16 thing, we had a change of commissioners and the former  
17 Commissioner left and as did the deputy, Special Deputy  
18 Commissioner who was appointed in this matter, creating a  
19 void there. And when I saw that and saw that the present  
20 Commissioner, Mr. Nickel, was going to appoint Mr. Peterson,  
21 I thought that was totally appropriate and showed me a great  
22 ability to comprehend what was going on here and the need to  
23 get your best person forward.

24           And following -- you know, in that -- in the  
25 hearing on approval of the plan as we watched the testimony

1 of the Ambac personnel as to the issues and areas of concern  
2 that they were administering and then seeing the  
3 interrelationship of the Liquidator with those folks dealing  
4 with these enormous transactional issues, it -- I came away  
5 with the conclusion that Mr. Peterson was every bit the  
6 equal of the Ambac personnel in terms of his knowledge of  
7 this system and the operation of this system and I was very  
8 impressed with the extent of his experience and extent of  
9 his knowledge.

10 So that gives me some perspective that I  
11 sometimes don't have in terms of the overall qualifications  
12 of an individual who is being asked to be appointed here as  
13 a Special Deputy Commissioner of this account. There is a  
14 complaint made about Mr. Peterson. One of the things is  
15 that, well, if he did such a good job there when he  
16 wasn't -- he was just a regulator with Ambac, how come he  
17 didn't solve this problem, how come he didn't get a -- you  
18 know, a program in place and why didn't he do earlier  
19 things.

20 And that was all stuff that we had looked at,  
21 I think, and had been explained in the affidavits, explained  
22 in the testimony of Mr. Peterson. I think the Commissioner  
23 of Insurance here, in exercising his discretion to move in  
24 this way, is certainly not exceeding that and I think is  
25 properly exercising it. This is the most complex

1 technically and from an insurance standpoint, a  
2 transactional standpoint of any of the rehabilitations and  
3 liquidations and WIS fund cases that I have oversaw in my  
4 many years now on the bench handling these cases.

5           It is a situation where it really requires  
6 someone, and, as Mr. Van Sicklen said, it's got to be  
7 someone who is ready to go. The idea that this could be a  
8 process where you stop and you back up and you run  
9 interviews and go through are there other candidates, are  
10 there companies that could do this, the whole thrust of this  
11 is to do what is in the best interest of these policyholders  
12 and I don't think there's ever been any doubt but that's  
13 been a primary motivating drive of the Commissioner and  
14 certainly of Mr. Peterson, and that's been borne out by his  
15 examination and the documentation that he's filed with the  
16 court.

17           To go into the marketplace and try to find  
18 someone who could fit the bill with all the expertise and  
19 with the background and the knowledge of this industry that  
20 Mr. Peterson has I think would be quite time-consuming. We  
21 did have the testimony of an expert who was a consultant who  
22 had been in this position with the Illinois department, and  
23 he was brought in to testify against the plan and the one  
24 thing that became apparent right away, other than Mr. Van  
25 Sicklen's ability to use his electronic devices to look up

1 Illinois law on the fly, was the fact that he didn't  
2 understand the Wisconsin law as it related to this, and he  
3 didn't understand the Segregated Account.

4 The law is different in Illinois and the  
5 areas where he had worked than it was in Wisconsin, so you  
6 were going to have to get somebody who has the Wisconsin  
7 background and then the experience in the particular case,  
8 and that type of an individual is an individual who is going  
9 to cost you some money.

10 This isn't a situation -- I think one of the  
11 briefs said you can't just go out to the -- you know, your  
12 Job Services and plug in we want somebody who can do all of  
13 this and expect to find somebody, and you don't look to see  
14 what's on the cheap. This is on the lower side of --  
15 Mr. Peterson's on the lower side of those valuations for  
16 this job. But you have to have somebody that has this  
17 unique ability to have the expertise, the background and the  
18 knowledge of Wisconsin law as it would apply in these cases  
19 to go forward.

20 And he's also going to have to be in-house,  
21 managing this at the Ambac office, and that means not -- and  
22 I think he told us he was going several times maybe a week  
23 or a month going out there, but it's got to be somebody who  
24 is much more hands on and right there. And looking at, you  
25 know, is this a fair compensation, well, first of all,



1 there's the argument, well, he's a state employee and he  
2 really shouldn't have the -- we shouldn't really appoint  
3 him.

4 He's got 15 months or 12 months that he's got  
5 to be away from the job. Well, yes, he is an employee of  
6 the state and he's -- his position has been described on  
7 numerous occasions. He's not a public official in the sense  
8 that it's been argument here under the statutes. If you  
9 looked at Chapter 49 -- well, start with section or Chapter  
10 15.73, Office of the Commissioner of Insurance, that was  
11 created by that section and that is Mr. Nickel.

12 The arguments on -- under 1942 14 J, he's a  
13 administrator created under an officer or a department, no.  
14 He's had no requirement that he file the individual  
15 statements, financing statements, and these are ethical  
16 statements. You fall into these categories and then you  
17 have to file the financial disclosure that elected  
18 officials, appointed officials have to file, and that  
19 Mr. Peterson didn't fall into that category.

20 Was he a state public official as is argued?  
21 Individual holding in state public office. He had certainly  
22 a position within the Office of the Commissioner of  
23 Insurance, but in terms of the conduct and ethics, I don't  
24 believe that he qualifies in this sense. And we don't  
25 really have to worry about that because that provision as it

1 relates to Section 1945 deals with their conduct, and  
2 basically sub. (8) says that "No former state public  
3 official for 12 months following the date on which he or  
4 see -- she ceases to be a state public official may for  
5 compensation on behalf of any person other than a government  
6 entity," and the statute, I think, clearly distinguishes  
7 this.

8                   Mr. Peterson would be in a position where he  
9 is not going to be leaving state government to be employed  
10 by someone for compensation where he would then be opposing  
11 or working on behalf of that person against or in conflict  
12 with potentially the agency that he'd been working with.  
13 This is a move from the position he now holds and he is the  
14 Special Deputy Liquidator, but making that a contracted one  
15 outside of the department, they are going to sever his  
16 employment.

17                   He gives up his benefits, any retirement,  
18 such as they are becoming any more. Those are things that  
19 he is going to sever and to give up to take this position  
20 so -- but he isn't going to do it in conflict with the  
21 department or the government. This is in furtherance of  
22 that, so I don't see any problem with the conflict argument  
23 under either the financial disclosure statement or the  
24 conflict of taking employment that would be in conflict with  
25 your government role. He's not doing that.

1                   Now let's talk about his compensation. The  
2 Nolan report, I reviewed it, as has counsel, and I have  
3 nothing else offered to show that this report is not  
4 something that would have been appropriate for the  
5 Commissioner to base his decision-making on appointing  
6 Mr. Peterson as the Special Deputy Liquidator as a contract  
7 employee. That is where he would be getting -- he'd have  
8 his position to the appointment and would be paid as  
9 administrative expense.

10                   Now, there are several arguments made there  
11 as to why that isn't appropriate. We've heard arguments  
12 that this is -- you know, couldn't you get somebody cheaper.  
13 There's no suggestion as what would be an appropriate wage,  
14 why this isn't appropriate for someone of Mr. Peterson's  
15 extensive experience and knowledge of this position. There  
16 is no indication -- I haven't seen another report that has  
17 attacked the reliability and credibility of the Nolan  
18 report.

19                   I have had arguments that there was not --  
20 there could have been other salary ranges or you didn't  
21 really look at enough people or so forth. Quite frankly,  
22 when you look at this, the need to have somebody in place  
23 and have this continuing and all these matters handled, you  
24 don't have a breadth of time and I think the Commissioner  
25 has well thought out that he really didn't need that.

1 I don't know if he did much else checking out  
2 to see availability and so forth, but he's got somebody who  
3 is eminently qualified for this position right there doing  
4 the job and he looks at him and, from what the reports say,  
5 said to him, We're going to be looking at you for this  
6 position, basically, get yourself an attorney.

7 Counsel for the Commissioner was in on it.  
8 This was an arm's-length negotiation between the parties,  
9 and when they reached an agreement under which it would be  
10 done, Mr. Peterson, if he accepts that upon the court's  
11 approval, then would be resigning his position, giving up  
12 all of those rights he had as an employee, taking this  
13 position on.

14 All of that appeared to me to be very much at  
15 arm's-length and very careful and thoroughly thought out,  
16 and I find that this method isn't an abuse of discretion.  
17 There is no -- there is some indication that this might be  
18 benefiting Mr. Peterson because he did some -- some work or  
19 conceding or took a position that the other side might like.  
20 That's not been borne out.

21 My view of his work up to this point from  
22 what I saw on the stand and the questioning was that he was  
23 very dedicated to his position, he understood his role, he  
24 understood the parameters of his job and his obligation and  
25 developing a plan to the policyholders, and I don't think

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1 he's wavered at that. I saw nothing that that innuendo  
2 would have any chance of breathing life into it.

3 This man's a good public servant and he has  
4 conducted himself accordingly, and very, very professionally  
5 and very, very proficiently. He's just the right man for  
6 the job at this time and there is a provision in his  
7 contract regarding a benefit if or what would be the  
8 termination situation. I think Mr. Van Sicklen has  
9 addressed that.

10 This is a job that could have implications to  
11 run for years as this thing works out and it will require,  
12 I'm sure, much more than 40 months of Mr. Peterson's time.  
13 And that's a -- you know, a protection for Mr. Peterson and  
14 a kind of a check on the Commissioner. He can't be  
15 arbitrary on this if he is at all susceptible to pressures.  
16 Nobody can get to him because you have got this factor  
17 sitting there that it has to be for cause, and I think  
18 that's a well-thought-out provision on both sides.

19 You know, you have got a man who can do the  
20 job. He's qualified. He's able to come to you at a kind of  
21 a middle salary range for people of this very high technical  
22 proficiency. It's a good -- it's a good hire I think is the  
23 best way I could describe it based on these records. So the  
24 court is going to for all of those reasons -- and I'm  
25 adopting here the positions that the Commissioner has

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1 stated.

2 I thought that was very thorough and I  
3 thought it responded to the issues of the hedge fund, and  
4 the hedge fund still hasn't gotten themselves to the  
5 position of policyholders and that's been determined  
6 quite -- that was determined very early in this. Because of  
7 the nature of the rehabilitation plan, I indicated I felt  
8 that they had enough of an interest that they had a right to  
9 be heard and they were given that right to be heard at the  
10 proceedings, but as was conceded today, they are not a  
11 policyholder. So in terms of this position to deal with the  
12 policyholder and their interest, that does ring the -- the  
13 objector's positions a bit hollow, but these are all things  
14 that we considered and thought out.

15 The argument that there's been delay in these  
16 proceedings struck me as kind of humorous in a way because  
17 that's the first time that I have heard that the -- that  
18 they are starting us or slowing us on the part of OCI and  
19 the Special Deputy Liquidator. Up until this point, what  
20 we've heard as a common refrain was you are moving too fast  
21 and the vowed goal was to be able to get into position to be  
22 able to, as soon as everything could be handled, start  
23 responding to the policyholders' claims and addressing those  
24 and today we're saying, well, you are -- you are not taking  
25 action, you have slowed down, you are not doing that, you

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1 are not looking after the interest because of this fact that  
2 you haven't been paying claims.

3 We were in position to do that. We've had  
4 numerous appeals, federal court, district court, federal  
5 circuit court, Wisconsin Court of Appeals now. All of this  
6 brings into play certain questions and in terms of action to  
7 be taken. I think the Commissioner is exercising  
8 appropriate evaluative restraint in terms of acting given  
9 all of these factors that are at play, but I'm satisfied  
10 that once this thing gets to the point where they can start  
11 going and we get these appeals -- although I recognize full  
12 well that when we get done with the Court of Appeals, then  
13 the next would be the Wisconsin Supreme Court and I imagine  
14 there may be some federal issues that will potentially kick  
15 around maybe up to the United States Supreme Court.

16 This is kind of a unique case and it's drawn  
17 a lot of interest in terms of developing case law. But the  
18 Commissioner has to administer this thing within the context  
19 of all those divergent forces at work and play, and I think  
20 he's selected about the best available person in  
21 Mr. Peterson to be the Special Deputy Liquidator to be hands  
22 on and solely the one who handles this account and this  
23 account only.

24 I reject the arguments that you could --  
25 couldn't you just hire somebody to do the job of

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1 Mr. Peterson that is non-Ambac related as the Special Deputy  
2 Liquidator. The Commissioner has to make a reasoned  
3 decision on how not only to administer his office but how to  
4 administer this account. I think he's done that, and nobody  
5 has shown me any case law that says that in this kind of a  
6 situation he is to keep the expense with the state rather  
7 than have it as administrative expense.

8           The contrary factor is that it is  
9 administrative expense that is recognized by statute. So I  
10 think in terms of all of the arguments, all the reasons,  
11 this is -- there's been no showing to me that there's an  
12 abuse of discretion here by the Commissioner in making this  
13 decision to, upon Mr. Peterson severing his employment with  
14 the agency, him being appointed as the Special Deputy  
15 Liquidator on a contract basis and then under the division  
16 of or the supervision of the office of Commissioner of  
17 Insurance, of course, and continue that function by moving  
18 to New York City and becoming totally immersed in this  
19 operation at the Ambac headquarters where you really need  
20 somebody full-time and hands on, and it's going to be a real  
21 lot of hard work for Mr. Peterson.

22           His terms of his employment seem reasonable.  
23 Moving to New York City, the allowance for rental. I have  
24 not been shown -- I suppose he could get something for \$50 a  
25 month or something. Probably none of us would want to walk



1 there, let alone live there in New York, but prices there  
2 are extremely high by most reports. So these are all fair  
3 considerations and I think the Nolan report is a very sound  
4 basis for the decision that's been made here by the  
5 Commissioner.

6 So for all of those reasons, the form of the  
7 order that's been submitted is proper and I will sign that  
8 order. Mr. Van Sicklen, I am going to ask you to take these  
9 orders back to Ms. Baux and have her mail those out, if you  
10 would.

11 MR. VAN SICKLEN: I'd be happy to enlist  
12 Mr. Lynch.

13 THE COURT: Oh, all right. Now, the other  
14 matters that you had.

15 MR. VAN SICKLEN: Yes, Your Honor, two  
16 housekeeping matters, and thank you for your time today.  
17 First is several weeks ago you ruled on a dispute between  
18 the Rehabilitator and Assured Guaranty regarding two  
19 outbound reinsurance contracts and the relief specified in  
20 your order directed Assured to comply with curing their  
21 violations of the injunction within 10 days and we've been  
22 working with them cooperatively on trying to fashion a fair  
23 way of handling payments pending their appeal in a way that  
24 would be, you know, cost effective and appropriate between  
25 the parties.

1                   It's a somewhat complicated issue to arrange  
2 because of one of the Assured entities being offshore and  
3 there's some offsetting premium against the money they owe  
4 the Segregated Account and so we filed a stipulation along  
5 with assured's counsel, Quarles & Brady, Debevoise, on July  
6 7 that sought or seeks to by stipulation extend the deadline  
7 for them to comply out to July 18th, and I brought another  
8 copy, but --

9                   THE COURT: Didn't we send that in, Laretta?  
10 I think we mailed that -- I signed that and mailed it up.

11                   (An off-the-record discussion was held.)

12                   THE COURT: It probably went out in today's  
13 mail. If you want another one signed, I can get that for  
14 you if you need it.

15                   MR. VAN SICKLEN: That would be great. We  
16 can double-check if you have already signed it. I just  
17 assured them that I would raise it today.

18                   THE COURT: All right. Bring it up, but I'm  
19 sure that we mailed that out to them today.

20                   MR. VAN SICKLEN: Last page. Thank you. One  
21 last matter, Your Honor, is yesterday we filed an  
22 application for approval to have the Rehabilitator employ  
23 Pricewaterhouse on selected tax matters and we had gotten  
24 sort of a penciled-in hearing date with your clerk here,  
25 Laretta, but she indicated that you did not have a several-

1 hour block of time until July 27th.

2 We are very anxious to get them going. We  
3 don't believe we need that long of a time. I think  
4 essentially, consistent with your ruling today, I'm hopeful  
5 that a position like this where we're hiring a consultant  
6 and we've attached the full application and their engagement  
7 agreement and the like to what we've filed and served on  
8 everybody.

9 Hopefully there won't be an objection, but  
10 I'm wondering if it might be possible to -- we haven't  
11 served out a hearing date yet, if there might be an hour of  
12 time sometime sooner. At one point we had been told maybe  
13 the 15th or the 21st you had a little bit of time, but --

14 THE COURT: 15th is off at this point.

15 MADAM CLERK: Yeah.

16 THE COURT: The 14th, is that too short a  
17 notice?

18 MR. VAN SICKLEN: I think it would be fine.  
19 We've served it out on everybody and we'll make a motion,  
20 and really I'm fine even not requiring advance objections  
21 and just dealing with it on the 14th.

22 THE COURT: We have time for an hour?

23 MADAM CLERK: How much time do you want?

24 THE COURT: You are looking at an hour?

25 MR. VAN SICKLEN: I think an hour would be

1     adequate.

2                     MADAM CLERK:  It looks like 2:30.  I don't

3     have anything -- oh, wait.

4                     MR. VAN SICKLEN:  I'll take whatever you have

5     and we'll serve it out as best we can yet today.

6                     THE COURT:  What time is that, Laretta?

7                     MADAM CLERK:  2:30.

8                     THE COURT:  2:30.  July 14th at 2:30.  All

9     right.  You will notice out, I assume, by the website.

10                    MR. VAN SICKLEN:  We'll serve electronically

11    to all counsel of record and I'll post on the website both

12    today yet.

13                    THE COURT:  All right.  We'll set that

14    hearing then for that time.  Anything else?

15                    MR. VAN SICKLEN:  That's all for me, Your

16    Honor.

17                    THE COURT:  All right.  That will be all,

18    then.

19                    (Court in recess at 3:40 p.m.)

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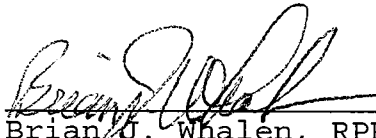
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1 STATE OF WISCONSIN )  
 ) SS.  
2 COUNTY OF LAFAYETTE )

3 I, Brian J. Whalen, Circuit Court Reporter for the  
4 County of Lafayette and State of Wisconsin, do hereby  
5 certify that the above and foregoing is a true, complete and  
6 accurate partial transcript of the proceedings on July 8,  
7 2011, taken in shorthand by me and transcribed into written  
8 form.

9 Dated at Darlington, Wisconsin, this 13th day of July,  
10 2011.

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13 Brian J. Whalen, RPR, CRR  
14 Official Court Reporter  
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