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In the Matter of the Rehabilitation of:

Case No. 10 CV 1576

Segregated Account of Ambac Assurance Corporation

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**MOTION OF THE ASSURED REINSURERS TO SUPPLEMENT THE RECORD  
AND [PROPOSED] ORDER**

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Assured Guaranty Re Ltd. (“AG Re”) and Assured Guaranty Corp. (“Assured Guaranty” and, together with AG Re, the “Assured Reinsurers”), by their attorneys Quarles & Brady LLP, move the Court under Wis. Stat. § (Rule) 809.15 to supplement the record by including the two documents attached here, each of which is not presently included on the Court’s docket but will assist the court of appeals in adjudicating the issues presented in Appeal No. 2011-AP-1486-LV. The grounds for this motion are as follows:

1. On or around April 15, 2011, the Commissioner of Insurance of the State of Wisconsin, as court-appointed rehabilitator of the Segregated Account of Ambac Assurance Corporation (the “Rehabilitator”), filed with the clerk of court in Dane County, and also served upon the parties, four documents: (1) a Notice of Motion and Motion to Enforce Injunction Against Assured Guaranty Corp. and Assured Guaranty Re Ltd; (2) a Brief in Support of Motion to Enforce Injunction Against Assured Guaranty Corp. and Assured Guaranty Re Ltd; (3) an Affidavit of Matthew R. Lynch in support of Motion to Enforce Injunction Against Assured Guaranty Corp. and Assured Guaranty Re

Ltd; and (4) a proposed Order Granting Motion to Enforce Injunction Against Assured Guaranty Corp. and Assured Guaranty Re Ltd.

2. A true and correct copy of the Rehabilitator's April 15 letter to the clerk of courts, referring to the filing and service of these four documents, is attached here as Exhibit 1.

3. The first three documents referred to above were entered into the record of this action by the clerk of courts.

4. The clerk of courts did not enter the fourth document, namely the proposed Order Granting Motion to Enforce Injunction Against Assured Guaranty Corp. and Assured Guaranty Re Ltd., into the record for this action.

5. A true and correct copy of the proposed Order Granting Motion to Enforce Injunction Against Assured Guaranty Corp. and Assured Guaranty Re Ltd. is attached here as Exhibit 2.

6. The proposed order attached as Exhibit 2 will assist the court of appeals in adjudicating the issues presented in Appeal No. 2011-AP-1486-LV and will further the disposition of that appeal. Appeal No. 2011-AP-1486-LV is the Assured Reinsurers' appeal from this Court's June 14, 2011 Order Granting Rehabilitator's Motion to Enforce Injunction Against Assured Guaranty Corp. and Assured Guaranty Re Ltd.

WHEREFORE, the Assured Reinsurers respectfully request that the Court grant this motion and direct the clerk to include the attached documents as part of the record to be transmitted to the court of appeals in Appeal No. 2011-AP-1486-LV.

A proposed form of order is set forth below.<sup>1</sup>

Dated this 25th day of July, 2011.

QUARLES & BRADY LLP

By: 

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Attorneys for Assured Guaranty Re Ltd. and  
Assured Guaranty Corp.

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

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<sup>1</sup> This motion will be deemed denied by operation of law if it is not granted within 14 days of today's date. Wis. Stat. § 809.15(4)(c). The Assured Reinsurers thus respectfully request that if this Court is inclined to grant this motion, it do so before August 8, 2011.

In the Matter of the Rehabilitation of:

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**ORDER**

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IT IS ORDERED that the record include the following documents:

1. Attorney Michael B. Van Sicklen's letter dated April 15, 2011 to Jody Baux, Ambac Clerk, Dane County Circuit Court (1 page).
2. The proposed Order Granting Motion to Enforce Injunction Against Assured Guaranty Corp. and Assured Guaranty Re Ltd (6 pages).

Copies of these documents are attached to the original Motion of the Assured Reinsurers to Supplement the Record and [Proposed] Order on file with the clerk of courts.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

BY THE COURT:

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

# **EX. 1**



FOLEY & LARDNER LLP

ATTORNEYS AT LAW

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April 15, 2011

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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. Notice of Motion and Motion to Enforce Injunction Against Assured Guaranty Corp. and Assured Guaranty Re Ltd.;
2. Brief in Support of Motion to Enforce Injunction Against Assured Guaranty Corp. and Assured Guaranty Re Ltd.;
3. Affidavit of Matthew R. Lynch in support of Motion to Enforce Injunction Against Assured Guaranty Corp. and Assured Guaranty Re Ltd.; and
4. Proposed Order Granting Motion to Enforce Injunction Against Assured Guaranty Corp. and Assured Guaranty Re Ltd..

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)  
Steven Klugman/Ana L. Frischtak (with enclosures via email)

BOSTON  
BRUSSELS  
CHICAGO  
DETROIT

JACKSONVILLE  
LOS ANGELES  
MADISON  
MIAMI

MILWAUKEE  
NEW YORK  
ORLANDO  
SACRAMENTO

SAN DIEGO  
SAN DIEGO/DEL MAR  
SAN FRANCISCO  
SHANGHAI

SILICON VALLEY  
TALLAHASSEE  
TAMPA  
TOKYO  
WASHINGTON, D.C.

# **EX. 2**

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In the Matter of the Rehabilitation of:

Case No. 10 CV 1576

Segregated Account of Ambac Assurance Corporation

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**ORDER GRANTING REHABILITATOR'S MOTION TO ENFORCE INJUNCTION  
AGAINST ASSURED GUARANTY CORP. AND ASSURED GUARANTY RE LTD.**

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This matter came before the Court on the Rehabilitator's motion (the "Motion") to enforce this Court's March 24, 2011 Order for Temporary Injunctive Relief (the "Injunction"), as made permanent by Section 10.02 of the Plan of Rehabilitation and paragraph 9 of this Court's January 24, 2011 Order confirming the Plan, against parties-in-interest Assured Guaranty Corp. ("AGC") and Assured Guaranty Re Ltd. ("AGRe") (collectively, "Assured"). Having considered the arguments of the parties and the briefs, affidavits, and other written materials on file in these proceedings, and for good cause shown, the Motion is hereby GRANTED and relief is ordered as set forth below.

In connection with this Motion, the Court hereby makes the following findings of fact and conclusions of law:

**FINDINGS OF FACT**

1. Assured is a party to two reinsurance agreements (the "Agreements") with Ambac Assurance Corporation ("Ambac"), whereby Assured reinsures exposures related to certain Ambac financial guaranty insurance policies that have been allocated to the Segregated Account of Ambac (the "Segregated Account") and are subject to payment pursuant to the Plan of Rehabilitation.



2. Under the Plan, the Segregated Account makes a portion of claims payments in cash and the remaining portion in surplus notes. The Plan also permits the Rehabilitator to reach settlements with policyholders that are payable in both cash and surplus notes.

3. Under the Agreements, Assured is “liable for its proportionate share of the risk associated with each Policy, including all Losses under the Policies.” “Losses” include “the amount of liability paid or to be paid with respect to claims, losses, [or] liabilities . . . including, with limitation, any settlements or compromises[.]”

4. The Agreements include identical insolvency clauses, which state: “In the event of the insolvency of the Company or of Proceedings . . . against the Company pursuant to Chapter 645 of the Wisconsin Insurance Code . . . , the reinsurance under this Agreement shall be payable to the Company (or its manager) or to its liquidator, receiver or statutory successor, on the basis of the liability of the Company under Policies reinsured without diminution because of the insolvency of or Proceedings against the Company, or because the liquidator, receiver or statutory successor of the Company has failed to pay all or any part of a claim.”

5. The Agreements include identical arbitration provisions, which state: “Except as provided . . . in the event of the Company being subject to Proceedings, any dispute or claim arising out of this Agreement shall be submitted to arbitration[.]”

6. On March 14, 2011, the Rehabilitator and Ambac reached a settlement with the holder and beneficiaries of Segregated Account policy number AB0632BE (the “Northstar Settlement”), whereby the policy was terminated in exchange for a one-time payment of \$7 million (\$4 million in cash and \$3 million in surplus notes). Assured reinsured the policy

exposure and was liable to Ambac for a 6.66667 percent share of the \$7 million settlement, which amounted to \$446,667.

7. On March 22, 2011, Assured informed the Rehabilitator that it would not pay its share of the portion of the settlement paid in surplus notes, contending that payment in surplus notes did not constitute payment giving rise to a “loss” under the Agreements. Assured also indicated that it would maintain this position with regard to future payments under the Plan of Rehabilitation, which will consist of a combination of cash and surplus notes.

8. On April 7, 2011, Assured sent Ambac letters demanding arbitration over the scope of Assured’s reinsurance obligations. The next day, Assured filed a petition to compel arbitration against Ambac in the New York Supreme Court for New York County.

9. Assured was properly served with notice of this rehabilitation and the Injunction in March 2010, it has participated in this proceeding, and it has been informed regarding developments in this proceeding since its commencement.

### **CONCLUSIONS OF LAW**

10. The Injunction, including paragraphs 1 and 7 thereunder, was entered pursuant to Wisconsin law regulating the business of insurance. The Injunction preempts and renders inapplicable any conflicting contractual provisions or conflicting federal statutes, if those statutes do not specifically relate to the business of insurance. The Federal Arbitration Act does not specifically relate to the business of insurance, and is therefore preempted and rendered inapplicable to this dispute.

11. Paragraph 1 of the Injunction states: “All persons are entities are enjoined and restrained from commencing or prosecuting any actions, claims, lawsuits or other formal legal proceedings . . . against Ambac . . . in respect of the Segregated Account or policies

(including financial guarantee insurance policies and surety bonds), contracts or liabilities allocated to the Segregated Account. . . . This Court has exclusive jurisdiction over any such actions, claims or lawsuits.” Demands for, and petitions to compel, arbitration constitute legal proceedings outside this Court.

12. By demanding arbitration and filing a petition to compel arbitration in another forum to litigate issues in respect of the Segregated Account and policies allocated to the Segregated Account, Assured has violated paragraph 1 of the Injunction. Further prosecution of such proceedings will result in a continuing violation of the Injunction.

13. Paragraph 7 of the Injunction states: “All persons and entities are enjoined and restrained from withholding or failing to pay or setting-off premiums or other payments (including without limitation recoveries[ and] reimbursements) owed (or that would have been owed but for the occurrence of the [rehabilitation] or the financial condition of the Segregated Account, . . . or the Ambac General Account) to . . . the Ambac General Account under or in connection with policies or contracts allocated to the Segregated Account[.]” Reinsurance agreements with Ambac that cover Segregated Account policy exposures or liabilities constitute agreements to pay Ambac in connection with policies allocated to the Segregated Account.

14. By withholding amounts owed under the Agreements for payments made in surplus notes on the Northstar Settlement, AGC has violated paragraph 7 of the Injunction. Further withholding of amounts owed under the Agreements for payments made in surplus notes that relate to Segregated Account policies will result in continuing violation(s) of the Injunction.

15. In addition, and in the alternative, the insolvency clauses of the Agreements are applicable, and the arbitration clauses inapplicable, under the circumstances of this proceeding. Under the specific terms of the Agreements’ insolvency and arbitration clauses,

this rehabilitation constitutes “Proceedings . . . pursuant to Chapter 645 of the Wisconsin Insurance Code” against the part of Ambac’s business (the Segregated Account) from which the present dispute arises. The insolvency clauses require Assured to make reinsurance payments “without diminution” on account of these proceedings or because the Rehabilitator “has failed to pay all or any part of a claim.”

16. In addition, and in the alternative, payments made by Ambac, the Segregated Account, or the Rehabilitator constitute “claims paid or to be paid” within the meaning of the Agreements.

17. Section 4.04 of the Plan establishes that a Segregated Account claim payment made in whole or in part with surplus notes constitutes full payment and satisfaction of that claim. By failing to object to confirmation of the Plan, Assured has waived any objection to the legal characterization of such payments described therein.

NOW, THEREFORE, based on the foregoing Findings of Fact and Conclusions of Law, the above-described written materials and arguments, and for good cause shown, it is hereby ORDERED as follows:

1. Within 14 days, Assured shall remedy its present violation of paragraphs 1 and 7 of the Injunction, as described herein.
2. Assured’s failure to timely remedy its present violations of the Injunction, or to take any recurring or future actions in violation of the Injunction, will result in sanctions.
3. Assured shall not withhold, suspend, or disallow any reinsurance payment to Ambac or the Segregated Account relating to any policy exposure or other liability that is allocated to the Segregated Account, on the basis that (1) Ambac, the Segregated Account, or the Rehabilitator has or will pay all or any part of the claim or settlement of that policy exposure or

other liability in a form other than cash, or (2) that the Segregated Account or the Rehabilitator has failed to pay such claim in part or in full. This paragraph does not apply to the extent Assured takes actions or exercises rights that are expressly permitted by the Plan of Rehabilitation or the Ceded Reinsurance Guidelines on file with this Court.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2011.

BY THE COURT:

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