

August 9, 2012

VIA UPS OVERNIGHT

Ms. Diane Fremgen, Clerk
Wisconsin Court of Appeals
110 East Main Street, Suite 215
Madison, WI 53703-5141

Re: ***In the Matter of the Rehabilitation of:
Segregated Account of Ambac Assurance Corporation
Appeal No. 2012AP1332 LV***

Dear Ms. Fremgen:

Enclosed for filing are five copies of the Motion to Extend or Stay Briefing Schedules Pending Court of Appeal's Action on Fannie Mae's Petition for Leave to Appeal, or in the Alternative, Motion for Status of the Pending Appeal.

By copy of this letter, each party, or group of parties represented by the same counsel, are being served with this document as indicated below.

Thank you.

Very truly yours,

Davis & Kuelthau, s.c.


Rodney W. Carter

RWC:lkr
Enclosures

cc: Ms. Barbara A. Neider and Mr. Daniel W. Stolper (via Email & US Mail)
Mr. William F. Bauer and Ms. Karen M. Gallagher (via Email & US Mail)
Mr. Michael B. Van Sicklen (via Email & US Mail)
The Honorable William D. Johnston (via US Mail)
Dane County Clerk of Court Carlo Esqueda (via US Mail)
All Counsel of Record (via email)

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COURT OF APPEALS OF WISCONSIN
DISTRICT IV

In the Matter of the Rehabilitation of:
Segregated Account of Ambac
Assurance Corporation:

Ted Nickel and Office of the
Commissioner of Insurance,

Petitioners-Respondents,

Ambac Assurance,

Interested Party-Respondent,

v.

Federal National Mortgage Association
(Fannie Mae),

Interested Party-Petitioner-
Appellant,

Wells Fargo Bank/Trustee of
Bondholders, Aurelius Capital
Management LP, Fir Tree Inc., King
Street Capital
Management LP, Monarch Alternative
Capital LP, Stonehill
Capital Management LLC, RMBS
Policyholders, Eaton Vance
Management, Nuveen Asset
Management, Restoration Capital
Management LLC, Stone Lion Capital
Partners LP, LVM
Bondholders, The Bank of New York
Mellon, Federal Home
Loan Mortgage Corporation (Freddie
Mac), Wells Fargo

Dane County Case No.
10CV1576

Appeal No. 2012AP1332 LV

Bank/Trustee of RMBS Certificate
Holders, HSBC Bank, USA,
National Association, Deutsche Bank
National Trust
Company, Deutsche Bank Trust
Company Americas, US Bank
National Association, Bank Insureds,
Bank of America NA,
Depfa Bank, PLC, Assured Guaranty
Corporation and Goldman
Sachs & Co., Inc., Knowledgeworks
Foundation and Treasurer
of the State of Ohio, One State Street
LLC, PNC Bank, NA,
All Student Loan and Lloyds TSB
Bank PLC, Customer Asset
Protection Company, Wilmington
Trust Company and
Wilmington Trust FSB, GCM
Opportunity Fund LP, Glenview
Capital Partners LP, Glenview
Institutional Partners LP,
Glenview Capital Masters Fund Ltd.,
Glenview Capital
Opportunity Fund LP and Glenview
Offshore Opportunity
Master Fund Ltd.,

Interested Parties.

**MOTION TO EXTEND OR STAY BRIEFING SCHEDULES PENDING COURT
OF APPEALS' ACTION ON FANNIE MAE'S PETITION FOR LEAVE TO
APPEAL, OR IN THE ALTERNATIVE, MOTION FOR STATUS OF THE
PENDING APPEAL**

Federal National Mortgage Association (Fannie Mae), by its undersigned counsel, moves the Court of Appeals for an order extending or staying the briefing schedule in this appeal while Fannie Mae's Petition for Leave to Appeal remains pending before this Court. In the alternative, Fannie Mae moves the Court for an order on the status of the pending petition.

The grounds for this motion are that due to the procedural history of this case, Fannie Mae's further briefing in the appeal will be influenced by this Court's resolution of the pending Petition for Leave to Appeal.¹ Indeed, whether Fannie Mae will be required to file further briefs in the appeal ultimately depends on how this Court resolves the pending Petition for Leave to Appeal. Because the pending petition addresses the finality of the trial court's order, and therefore whether there is a final, appealable order from which an appeal can properly be taken, the Court's resolution of the pending Petition for Leave to Appeal necessarily will determine how, whether, and with what priority Fannie Mae will address certain issues raised by the Office of The Commissioner of

¹ An outline of the relevant procedural history of this case can be found in Fannie Mae's previously filed pleadings, currently pending before this Court.

Insurance and Ambac Assurance Corporation in their pending motions to dismiss.

Fannie Mae filed its Petition for Leave to Appeal on June 18, 2012 and its Notice of Appeal on July 9, 2012. Both filings sought review of a June 4, 2012 order of the circuit court. Ambac Assurance Corporation, the Office of the Commissioner of Insurance and Commissioner Theodore K. Nickel filed motions to dismiss Fannie Mae's appeal on July 20 and July 23, 2012, claiming that the circuit court's order was non-final and not appealable as of right. On July 25, 2012, Fannie Mae moved the court for an enlargement of time in order to formulate a response to the motions to dismiss.

For the reasons outlined in Fannie Mae's pending Petition for Leave to Appeal, Fannie Mae believes the trial court's June 4, 2012 order is final. Likewise, the movants maintain the trial court's order lacks finality. However, this Court's decision on Fannie Mae's Petition for Leave to Appeal will effectively decide whether the trial court's order is final or non-final, negating the need for a response to the motions to dismiss.

Pursuant to Wis. Stat. § 809.14(3)(a), "[t]he filing of a motion seeking an order or other relief which may affect the disposition of

an appeal or the content of a brief, . . . automatically tolls the time for performing an act required by these rules from the date the motion was filed until the date the motion is disposed of by order.”

As the resolution of Fannie Mae’s Petition for Leave to Appeal could affect the disposition of the appeal, as well as negate the need for Fannie Mae to respond to the pending motions to dismiss, Fannie Mae respectfully requests an order staying the briefing schedule imposed by Wis. Stat. § 809.19 while a decision on the Petition for Leave to Appeal remains pending before this Court. If this Court determines that this motion does not fall within the reach of § 809.14(3)(a), Fannie Mae respectfully requests that this Court nonetheless extend the briefing schedules while the Petition for Leave to Appeal is pending for the reasons cited above.

In the alternative, Fannie Mae respectfully requests an order on the status of the pending Petition for Leave to Appeal with extended briefing deadlines being issued to accommodate any impact that this Court’s decision on the Petition for Leave to Appeal will have on the need for additional briefing in the appeal.

Dated at Brookfield, Wisconsin, this 9th day of August, 2012.

DAVIS & KUELTHAU, s.c.
*Attorneys for Federal National
Mortgage Association (Fannie Mae)*

By: 

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