

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

IN THE MATTER OF THE REHABILITATION
OF THE SEGREGATED ACCOUNT OF
AMBAC ASSURANCE CORPORATION

Case No. 13-cv-325

(Removed From Dane Court Circuit
Court – No. 10 CV 1576)

MOTION TO REMAND

The Commissioner of Insurance of the State of Wisconsin, as the court-appointed Rehabilitator of the Segregated Account of Ambac Assurance Corporation, moves the Court for an order remanding the above-captioned state insurance rehabilitation proceeding, in full, to the Circuit Court for Dane County, Wisconsin, pursuant to 28 U.S.C. § 1447(c). This Motion is supported by the accompanying brief and declaration (with exhibits).

As detailed more fully in the Commissioner's brief, remand is warranted because:

1. The motion that OneWest Bank, FSB ("OneWest") seeks to remove from the ongoing state insurer rehabilitation proceeding is not an independent controversy with a new and different party, but rather a motion pertaining to the management of the business of the insurer against two entities that were given formal notice of the rehabilitation within a week after the rehabilitation commenced in March 2010, and an opportunity to participate;
2. The Notice of Removal violates 28 U.S.C. § 1446(b)(2)(A), because the other of those two entities against whom the motion sought relief—Deutsche Bank National Trust Company—did not join in the removal, and its time to doing so has expired;
3. Even if OneWest had followed the removal statutes, those statutes are reverse-preempted by the McCarran-Ferguson Act, 15 U.S.C. § 1012, because they would operate to impair the state's comprehensive statutory structure establishing exclusive jurisdiction for matters pertaining to the rehabilitation in the State Rehabilitation Court; and

4. This Court should abstain from deciding issues arising out of the ongoing state proceedings under the abstention doctrine established by *Burford v. Sun Oil Co.*, 319 U.S. 315 (1943).

Dated this 21st day of May, 2013.

FOLEY & LARDNER LLP

By: /s/ Matthew R. Lynch
Michael B. Van Sicklen, SBN 1017827
Jeffrey A. Simmons, SBN 1031984
Matthew R. Lynch, SBN 1066370

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

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